




















# **Judicial Inquiry Into the Care of Kim Anne Popen by the Children's Aid Society of the City of Sarnia and the County of Lambton**

**His Honour  
Judge H. Ward Allen**



**VOLUME 3**





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**1982**

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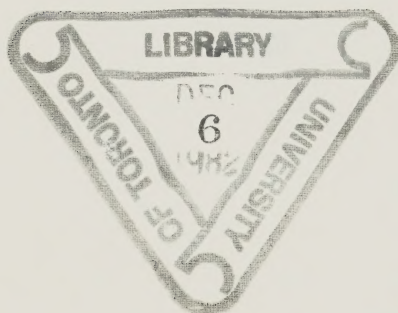
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## Chapter XXV

### The Role of Relatives, Neighbours and the Community in Kim's Life

The sittings of the Inquiry were widely advertised throughout the City of Sarnia and the County of Lambton and southwestern Ontario. Few members of the public attended any of the sittings. Representatives of the media were in regular attendance at the sittings and their reports were extensive.

Only three persons appeared entirely voluntarily to testify upon the Inquiry without having had some involvement with Kim's life either directly, as in the practice of a profession, or indirectly, as by employment or association with the Society or some other institution or agency. They were not neighbours or friends or relatives of Annals Popen and Jennifer Popen. They were concerned with what they perceived as implications of the matter extending beyond Kim and her family.

One was Robert Sharen, Reeve and head of the municipal council of The Village of Grand Bend in the County of Lambton, who spoke of his satisfactory relationships with the Society. The Society had been most helpful in connection with a proposed adoption of a child in 1976. He had been in municipal politics since 1973, but heard no complaints about the Society's operations prior to hearing of Kim's case, presumably in December, 1977.

He said the staff of the Society were very dedicated persons who were sometimes overtaxed. He understood there were shortages of both funds and staff, problems which he felt were not unusual among what he called "government agencies."

He said that Mrs. Harvey had been instrumental in developing a child abuse programme which had a broad basis of community involvement.

He expressed the opinion that responsibility for Kim's tragedy had to be borne by society generally and not only by the Society or certain of its staff.

Mr. Sharen made a number of comments which I regard as being recommendations for the improvement of services such as those provided by children's aid societies in Ontario. I deal with those comments in Chapter XXXII of the Report.

Another was Raymond W. Wryzykowski who spoke of his experience as a member of the Board of Directors and as President of the Society over a period of eight years, which I believe ended in 1972.

In addition to his service to the Society, Mr. Wryzykowski was active in his church and in the community generally, particularly in family related matters. He is a lawyer. He spoke of Mr. Lovatt and Mrs. Harvey as being dedicated and hard working persons. Especially during his last two years on the Board of Directors of the Society when he was President and Mr. Lovatt was the Local Director, Mr. Wryzykowski had close and satisfactory dealings with Mr. Lovatt and Mrs. Harvey. He had no complaint about Mr. Lovatt's management of the Society. He thought the members of the Board of Directors of the Society were dedicated and formed an excellent board.

Mr. Wryzykowski too had a number of comments in the nature of recommendations which I deal with in Chapter XXXII of the Report.

The third was Inez Williams who spoke of the valuable contributions of Mr. and Mrs. Lovatt to the community and her concern for their well-being in the light of the Inquiry and the publicity surrounding Kim's care.

None of Mr. Sharen, Mr. Wryzykowski and Mrs. Williams had any direct knowledge of or involvement in Kim's case.

No one who was a close neighbour, friend or relative of the Popen family came forward entirely voluntarily. Such persons, had they come forward and



testified, might have been of considerable assistance to me. On the testimony upon the Inquiry, I find it inconceivable that no one, apart from those few who testified upon the Inquiry, most of whom were strangers involved with Kim's case as part of their professional duties, or as a result of their employment, saw or heard anything which aroused any suspicion that Kim was being abused.

It would seem that the failure of persons to come forward to testify upon the Inquiry, or even to speak to the counsel and investigative staff of the Inquiry to ascertain if what they had seen or heard would be of importance to the Inquiry, is part of a phenomenon noticed in communities other than the City of Sarnia and the County of Lambton.

In its report which I have reviewed in Chapter XXVIII of this Report, the Farina Committee wrote in part:

"A more serious concern is that the community seems to condone a certain level of child abuse, and citizens fail to report suspected incidents, perhaps because of conflicted feelings about privacy and parental rights. Whatever the reasons, we note that this child was seriously abused on many occasions and people in the community must have been aware, yet it went unreported."

Mr. Petersen, a member of the Farina Committee, was asked to comment upon the first sentence of that statement. He said:

"A. It's a global statement. However, there was evidence in the way of that some neighbour apparently had heard Kim crying for a considerable length of time and not reported it.

Q. Yes?

A. So it has some connotation to the Kim Popen case as well but it is more global in our presentation of it, that statement, that it seems to be a community attitude that goes beyond the Sarnia area."

The testimony upon the Inquiry was less dramatic than Mr. Petersen's words would suggest, but, with only that reservation, his comment upon the application of the statement in the Farina Committee's report to Kim's case is accurate.

When asked to explain the meaning of the expression "condone a certain level of child abuse" in the Farina Committee's report, Mr. Petersen said:

"A. I think we are reflecting on some community values, that some parents think they have the inherent right because of their parenthood to punish a child physically, and that is by many people considered a right, and, therefore, they're prepared to condone it when they see it, that a father has a right to punish his son and if a community member is witness to that many times will be prepared to condone it based on the value system of he is a father, he has a right to correct his son and punish him, and that is sort of the kind of gray area where things begin to be touchy and difficult when the punishment is carried beyond a reasonable level and what is "reasonable level"? We don't always know and often we have to present our evidence to the court in order that the court can be the judge as to what community values are, what standards are, what can't be condoned as reasonable correction, physical punishment of a child."

Mr. Petersen expressed his personal opinion that "community standards" relating to child abuse had been changing over a considerable number of years. I understand him to be speaking of the community in a global sense. He felt that, by reason of publication of various items by the media, the whole community, including specifically parents and social workers, had become more aware of the rights of individuals, including children and parents. The result, as he saw it, was that social agencies, such as children's aid societies, were more apt to hear of incidents of alleged abuse of children. Thus, even in the two years following Kim's death there was "considerabl[y] more awareness" of child abuse, even among social workers.



Dr. Bates in his testimony expressed a somewhat similar view. He noted that many more cases of child abuse or suspected child abuse were reported in Ontario in 1977 than had been reported in 1976. That reference was to the Central Registry of such reports established by the Ministry of Community and Social Services. He had some reservations as to the accuracy of records such as those maintained by that Central Registry. Those reservations arose because of uncertainty as to the degree to which children's aid societies across Ontario made such reports.

He attributed that increase in the number of reports to publicity given by the media to cases, such as Kim's, involving death as a result of child abuse. He deplored the scarcity of publicity given to apparently less tragic cases.

Dr. Bates stated that authoritative and reliable sources estimate that, in areas of the United States of America comparable to Ontario, there are in each year between three hundred and three hundred and fifty cases of physical abuse of children for each million persons of population. On the basis of Ontario having a population of eight million, those estimates would indicate that in each year there were between twenty four hundred and twenty eight hundred cases of physical abuse of children.

He noted that those estimates related only to physical abuse. They did not apply to other types of abuse or neglect, such as emotional or sexual abuse or nutritional neglect. Dr. Bates said that if all types of abuse were considered the estimate of frequency might rise to an incidence of close to nine hundred cases of abuse of children for each million persons of population. That would be perhaps eight or nine thousand cases in Ontario each year.

Dr. Bates understood that in 1977, even with the great increase from 1976 which he had noted, only one thousand and forty five cases were reported to the Central Registry. Assuming the accuracy of the estimates of frequency of abuse mentioned by Dr. Bates, that figure represents less than half of the number of cases of physical abuse and about one-eighth of the number of cases of abuse or neglect of all sorts that occurred in Ontario in that year.

The statement in the Farina Committee's report as explained by Mr. Petersen in his testimony is supported by Dr. Bates' testimony.

Dr. Bates in his testimony spoke of varying standards of care of children, including especially their discipline, throughout the world. He said that what Canadians regard as imposition of discipline of children so harsh as to be abuse is not, in some parts of the world, viewed as abuse. He said that in those parts of the world it is regarded as a normal and usual form of discipline of children. He said that Canada recognized that abuse of children was a problem in our society, but some countries have not yet made that recognition.

He expanded upon that testimony to mention the ways in which some abandoned or unwanted children in some countries are treated by elements of government.

In one country he mentioned, he said he had been told that the government attempted to deal with the problem of delinquency of children who roam some cities in bands. Government employees merely pick them up, transport them to the woods and leave them to their own devices to live or to die.

The thrust of this area of Dr. Bates' testimony was that, because the population of Canada is composed of people who, or whose parents or ancestors, were raised in countries with a multitude of standards as to what constitutes abuse of children, special personnel and training would be required to familiarize some of the population of Canada with the standards of care of children currently acceptable in Canada. That would be in addition to an ongoing and organized programme to keep the entire community, including members of the various professions whose careers in any way relate to child care or child welfare, aware of the existence and extent of the problem of abuse of children in the community. The programme would seek the assistance of the entire community in dealing with the problem either in general or in specific instances.

I have made these general observations so as to place in an appropriate perspective the comments I will make in this Chapter upon the

involvement of the community in Kim's life. In light of what I have written heretofore in this Chapter, as well as elsewhere in the Report, dealing with certain individuals and segments of the community, it is not surprising that few individuals were involved in Kim's life other than in the course of their professional careers or their employment.

On the basis of the testimony upon the Inquiry and the exhibits filed, it would seem that Annals Popen had a number of relatives in the City of Sarnia and the County of Lambton. He apparently maintained good relationships with any of them who were mentioned, even if not by name, upon the Inquiry. On the other hand it was indicated that Jennifer Popen did not feel that she was well received by those relatives even though one of them, Francis Kameka, who testified upon the Inquiry, often visited her home and "baby-sat" Kim for her on occasion, including the night before her death.

Francis Kameka was the only relative who testified upon the trial. He is a nephew of Annals Popen. He resides with his parents in Sarnia.

He acknowledged that he did not "get along very well" with Jennifer Popen. He said that was because he had found her to be a liar and he did not believe what she told him.

During the summer of 1976 he spent a fair amount of time at the Popen home. After Kim was returned to her parent's home by the Society in May, 1976 he saw Jennifer Popen strike Kim's hands and arms on occasion. The blows he saw were in the nature of slaps with the flat of Jennifer Popen's hand for minor acts of disobedience. Kim cried. The last such occasion was during the last week of Kim's life.

In July or August, 1976 he saw bruises on Kim's jaw and arm. Jennifer Popen did not offer any explanation for the presence of those bruises.

He had not seen Annals Popen slap Kim.

Shortly before Kim's death he saw a sore on her lip. Jennifer Popen told him it was caused by



Kim's biting into some hot waffles while Jennifer Popen answered the door.

On August 11, 1976, the day of her death, he saw Kim in her home at about 11 o'clock in the morning. He did not notice anything unusual about her behaviour or actions. He returned to Kim's home at about 4:30 in that afternoon. She was not walking much or playing. She would not come to him when he called to her. Otherwise she appeared to be normal. She did not seem to be sick or "not herself."

He had seen Kim on the three or four days preceding her death. On those days too she acted normally and seemed to be in good health and he saw no marks upon her other than a sore on her lip.

His parents had told him of Kim's visits to hospital, but he had no knowledge of how she had been injured.

He said he felt it was strange that this little girl, Kim, was injured so often. The following exchange of questions and answers occurred during one period of his cross-examination:

"Q. Have you any knowledge of how those injuries occurred?

A. No.

Q. Did you think it strange that this little girl had been hurt so much?

A. Yes.

Q. Did you think that all of these injuries were just accidents?

A. No.

Q. What did you think they were Mr. Kameka?

A. I don't know.

Q. If they weren't accidents, how did you think these things had happened?

A. Well, she hit her.

Q. Who hit her?

A. Jennifer."

He had seen Kim in her crib while he "baby-sat" her. She slept and he did not have to attend to her in any way. In his opinion she could not get out of the crib by herself. That expression of opinion accords with Dr. Singh's testimony.

Despite his observations of Kim, her cut lip and the occasions of Jennifer Popen slapping her, and despite his stated unwillingness to believe what Jennifer Popen told him, which would include the explanation for Kim's sore lip, and despite his belief that Kim's injuries were not all caused by accidents, Francis Kameka made no report to anyone that Kim had been physically mistreated.

He was not asked if he was aware of the provisions of section 41 of The Child Welfare Act. I presume he was not. I presume that he accepted that whatever slaps he saw were appropriate disciplinary measures. That presumption is founded on the testimony of Dr. Bates and Mr. Petersen which I have mentioned in this Chapter.

I am not prepared to hold that Francis Kameka's knowledge of Kim's care was sufficient to require him to make any report pursuant to the provisions of section 41 of The Child Welfare Act.

Another relative who was mentioned was Mrs. Fay Popen. She was Kim's aunt, the wife of Annals Popen's brother. Because of her health she was unable to testify upon the Inquiry. Her important involvement in Kim's life occurred in June, 1975.

It was Fay Popen who brought Kim to Dr. Jumean on June 6, 1975 and told him of her fear that Kim was being abused by Jennifer Popen. It was that visit which led to Dr. Jumean's telephone call to the Sarnia Police Force on June 16, 1975 and the subsequent involvement of the Society.

Again I presume that Fay Popen was not aware of the provisions of section 41 of The Child

Welfare Act. However, she, unlike Francis Kameka, was not prepared to accept what she saw. She acted responsibly and brought her concern to Dr. Jumeau, the Popen's family doctor. I presume that, like his colleagues in the medical profession, she relied on him to take whatever steps would be required.

Fay Popen had knowledge of physical mistreatment of Kim which, in her opinion, required her to do something to protect Kim. That would be sufficient to require her to make a report pursuant to section 41 of The Child Welfare Act. Her failure to do so arose, at least in part, from her lack of knowledge of the provisions of the statute. There was nothing to indicate what she might have done had she been aware of the statutory provision.

Despite her lack of knowledge, it was Fay Popen who first actively sought assistance for Kim. Some doctors and nurses had been concerned about the possibility that Kim had been abused and might be abused again. Entries to that effect had been made in medical reports and hospital records. Dr. Singh had directed Mr. Khattab to investigate. All of that remained in medical and hospital files. No one made a report pursuant to section 41 of The Child Welfare Act.

Fay Popen's visit and her expression of concern stirred Dr. Jumeau to action. That action was long overdue. He waited ten days after Fay Popen's visit before he called the Sarnia Police Force. That was not compliance with the statute, but it did lead to the introduction of Kim's case to the Society.

Jennifer Popen testified that Fay Popen acted out of selfish reasons for wanting to have custody of Kim. There was no evidence to support that allegation. This is another area in which Jennifer Popen's testimony is not worthy of belief. I reject it as being simply another of her self-serving lies.

While Fay Popen did not comply with section 41 of The Child Welfare Act there is no strong suggestion that had she reported directly to the Society or the Crown Attorney the workers of the Society would have acted differently than they did on



June 17, 1975 and thereafter. In saying that, I am aware of the suggestion, in the testimony of the Society's personnel, that their belief that the call to the Sarnia Police Force was anonymous might have affected their actions. I accord no validity to that suggestion.

On June 17, 1975 Fay Popen showed marks of Kim's injuries to Mrs. Saul and Mrs. Hoad, in Police Constable Gander's presence, and told them that Kim had been injured by Jennifer Popen. She expressed her concern about the care that Kim was receiving. Even if the telephone call to the Sarnia Police Force was anonymous, the Society then had a statement directly from Fay Popen that Jennifer Popen had injured Kim. Mrs. Saul was concerned enough by what she saw and heard to make an urgent report to Mrs. Harvey who agreed with Mrs. Saul's initial assessment.

Fay Popen's failure to comply with section 41 of The Child Welfare Act had no bearing upon the eventual unfortunate result.

The only members of the public who, on the testimony upon the Inquiry, had any involvement in Kim's life, other than in a professional or career sense, were Mr. Douglas Gregory Vandenberghe and his wife, Mrs. Judith Ann Vandenberghe. Mr. and Mrs. Vandenberghe had been neighbours of Annals Popen and Jennifer Popen prior to Kim's birth and for another period during the latter part of Kim's life after August 31, 1975. They maintained a close friendship with Annals Popen and Jennifer Popen during all of Kim's life. They had children of their own.

Both Mr. and Mrs. Vandenberghe testified upon the Inquiry. Neither of them had observed any untoward incident involving Kim prior to her being placed in the care of the Society on August 31, 1975. Neither of them had observed any injury to Kim, nor had they any knowledge of any injury to her prior to that time. They had not seen Kim often until then.

After August 31, 1975, Mr. and Mrs. Vandenberghe demonstrated their real friendship for Annals Popen and Jennifer Popen. They attempted to help them. At their request, Mr. Vandenberghe drove Annals Popen and Jennifer Popen to the courthouse on

several occasions and remained available in the building, willing to give character evidence if required, during the proceedings in the Provincial Court (Family Division) of the County of Lambton. He was not called as a witness during those proceedings.

After Annals Popen was sentenced upon the charge under section 40 of The Child Welfare Act, he asked Mr. Vandenberghe to take him to Alcoholics Anonymous. Mr. Vandenberghe took him to a number of meetings of Alcoholics Anonymous.

In addition to that, Mr. Vandenberghe helped Annals Popen and Jennifer Popen in connection with the Parent Effectiveness Training Course. He said that Annals Popen attended that Course because he was directed to do so, but nonetheless he seemed to have a better understanding of it than Jennifer Popen had. He said Jennifer Popen appeared to be confused by it. She questioned its purpose and did not enjoy going to it.

Upon the Inquiry, Mr. Vandenberghe was asked about conversations he had had with Jennifer Popen after August 31, 1975 with reference to Kim's injuries.

He testified that Jennifer Popen told him that the broken arm suffered by Kim in March, 1975 was caused by Kim catching her arm in her crib. He believed Jennifer Popen and accepted her statement that the injury was caused by accident.

He said that Jennifer Popen gave him contradictory explanations for Kim's broken arm which was found upon her visit to the hospital on August 31, 1975.

The first explanation was given to him "right after" the Society took Kim into its care. That explanation was that Annals Popen, having come home intoxicated and fallen asleep on the couch, awoke during the night and asked Jennifer Popen to prepare food for him; Jennifer Popen refused; Kim was crying; Jennifer Popen picked Kim up and Annals Popen threw a slipper at Kim and caused the injury to Kim.

The second explanation was given to him about a week later. It was similar to the first, but in it, rather than throwing a slipper, Annals Popen had hit Jennifer Popen and his hand had hit Kim and caused her injury.

A third explanation was given to him after Kim's death and Jennifer Popen's arrest upon the charge of manslaughter. He had visited her in jail on the day of her arrest. She told him then that she had injured Kim. He advised her to inform the Sarnia Police Force of this and she did, in his presence. He had told her that that would enable her to get the help she might need. She said that Annals Popen had not injured Kim. She said that she lost her temper and injured Kim and could not later remember what she had done. She said she hit Kim all over her body, about the groin area, back, kidneys and head,

"just a flay of fists about the body of the baby and she could have damaged the lower area."

That latter was in response to a question as to how the injuries to Kim's rectal and vaginal areas had been caused.

In the statement which Jennifer Popen had given to the police officers on that occasion, she denied knowledge as to how those injuries were caused, other than that those in the vaginal area might have occurred if Kim turned while Jennifer Popen hit her. Apart from that possible distinction that statement corresponded with what she had earlier told Mr. Vandenberghe.

In that explanation Jennifer Popen maintained that Kim had died as a result of falling from the porch to the ground on August 11, 1976.

Mr. Vandenberghe had also spoken with Annals Popen about Kim's injuries on and prior to August 31, 1975. Annals Popen had told Mr. Vandenberghe that he had no memory of how Kim was injured in March, 1975 because he had been "drinking most of the night" and when he awoke in the morning Jennifer Popen told him what had occurred. He accepted that what Jennifer Popen told him was true and that he had injured Kim.



On the basis of that and his own lack of belief that Annals Popen could have injured Kim so severely, Mr. Vandenberghe had urged Annals Popen to reject Mr. Higgins' advice that he plead guilty to the charge under section 40 of The Child Welfare Act. But Annals Popen told Mr. Vandenberghe he would plead guilty as the means of having Kim returned to her home.

Mr. Vandenberghe testified that he saw no mark of any injury to Kim until after she was returned to her home by the Society in May, 1976. He had seen a cut on her lip, a bruise on her lower chin and a sore on the end of a finger. He said the marks of injury had been there "gradually in the three month period" after her return. He particularly noticed them when Mrs. Vandenberghe drew them to his attention about two weeks before Kim died. He had not seen Kim very often even during that three month period when both his family and hers were living in the same building, but in separate apartments.

He described the injury to the lip as "[looking] like a coldsore" and being very easily seen. He said that the marks of injury he had seen were similar to the corresponding marks seen on Kim's body after her death as shown in photographs filed as exhibits upon the Inquiry.

He said Mrs. Vandenberghe had been "wondering" about the various injuries suffered by Kim. He said Mrs. Vandenberghe felt that Jennifer Popen told "too many stories to every injury". He tried to allay his wife's concerns and suggested that the injuries were such as children suffer in normal activities. But even so, in describing his own thoughts at the time, he said,

"I didn't know what to really believe or say".

In another answer he spoke of Mrs. Vandenberghe having brought Kim's injuries to his attention a couple of weeks before Kim died and concluded the answer by saying:

"...I didn't want to believe anything was going on."

The latter answer is virtually an admission of wilful blindness.

Mr. Vandenberghe said Jennifer Popen was critical of Mrs. Lo, particularly because of questions she put. Jennifer Popen resented Mrs. Lo's visits. Jennifer Popen and especially Annals Popen were fearful that if Kim were injured again, even accidentally, she would be removed permanently. He understood that that fear stemmed from some comment made by someone when Kim was returned in May, 1976.

Mr. Vandenberghe said no one from the Society had inquired of him as to Kim's care or well-being while she was alive. Mrs. Harvey spoke to him after Kim's death. She merely expressed disappointment and a lack of understanding of what had happened. She asked him to try to help Annals Popen and Jennifer Popen.

On the basis of Jennifer Popen's having told him that she injured Kim only when Annals Popen was absent, Mr. Vandenberghe believed that Annals Popen was unaware of what was happening. That belief was also based on his observation that Annals Popen entirely trusted Jennifer Popen and entrusted Kim's care to her.

Mr. Vandenberghe was vehement in stating his belief that Annals Popen had not harmed Kim, a child whom he loved and treated tenderly.

I am satisfied that Mr. Vandenberghe was aware that Kim had suffered the injuries which he described. They were upon parts of her body not covered by clothing. Because of his wife's concern expressed to him he had some suspicion during the last two weeks of Kim's life that some or all of her injuries had not been caused by accident.

Bearing in mind his knowledge that Kim had been seriously injured in August, 1975, and had been in the care of the Society for several months as a result thereof, and his knowledge that Annals Popen had pleaded guilty to a charge in the Provincial Court (Family Division) of the County of Lambton as a result of that injury, Mr. Vandenberghe would have been justified had he made a report pursuant to section 41 of The Child Welfare Act.

The overt acts of kindness by Mr. Vandenberghe, primarily to Annals Popen, but to Jennifer Popen as well, even after August 31, 1975, would seem to establish the absence of malice on his part, so as to provide to Mr. Vandenberghe the protection afforded under section 41(2) had he chosen to make a report pursuant to section 41(1) of The Child Welfare Act.

In my opinion Mr. Vandenberghe did not have sufficient "information of the...physical ill-treatment [of Kim] or [her] need for protection" to require him to make a report pursuant to section 41 of The Child Welfare Act, even if he were aware of the statutory provision. He was not asked about his awareness of the provisions of the statute. I presume he was not aware of them. I am satisfied that he was suspicious of the circumstances. I am not satisfied that he was possessed of sufficient information to place on him the statutory duty to make a report pursuant to section 41 of The Child Welfare Act.

That he did not make such a report did not contribute to the tragedy. He was aware that the Society, as represented by Mrs. Lo, was maintaining contact with Kim's family and supervision of her care and was visiting the Popen home. He was not aware of any injury that Mrs. Lo could not have seen as easily as he saw it. The marks of injury were there for some time. He had been told by Annals Popen, whom he believed, that Mrs. Lo had said that one of her duties was to strip Kim, but she had chosen not to do so because of her own embarrassment and her trust that Annals Popen and Jennifer Popen would not harm Kim. He had been told that even though Annals Popen had objected that, if it were her duty, she should do it, Mrs. Lo had persisted in that decision not to strip Kim.

The climate, if I may call it that, within the Children's Aid Society, in respect of the management of Kim's case, especially by Mrs. Harvey, was such that I am not disposed to think that any expression of concern by Mr. Vandenberghe based on his uncertainty and suspicion would have prevailed to cause Mrs. Harvey and Mrs. Lo to act in any way differently. In any event, within about a week of Mrs. Vandenberghe drawing Mr. Vandenberghe's



attention to the injuries and to her concern about Kim and his "[not wanting] to believe anything was going on," Mrs. Lo had reported her concerns to Mrs. Harvey and the application for a supervisory order in respect of Kim was presented to Judge Nighswander on August 4, 1976. I am not disposed to think that Mr. Vandenberghe's expression of concern would have led to any different application.

Mrs. Vandenberghe's evidence was similar to that of her husband. While she had not seen Kim often in that period she had not noticed any mark of injury to Kim prior to August 31, 1975. During that period of Kim's life her family were not neighbours of Mr. and Mrs. Vandenberghe, but the friendship and social contact had been maintained. Prior to August 31, 1975 Mrs. Vandenberghe had no reason to suspect that Kim had been abused. She was surprised then to learn that Kim had been taken into the care of the Society.

By May, 1976 Annals Popen and Jennifer Popen had returned to live in the same building as Mr. and Mrs. Vandenberghe. Mrs. Vandenberghe had not discussed Kim's case with them. Mr. Vandenberghe had kept his wife informed of his conversations with them.

Mrs. Vandenberghe said that all seemed well during Kim's visits with her parents prior to her return to their home. Mrs. Vandenberghe was not present at all of those visits.

Mrs. Vandenberghe described some of her observations after Kim was returned to her parents' home in May, 1976.

On one occasion, during the last three or four weeks of Kim's life, Mrs. Vandenberghe was in the Popen apartment visiting. Mrs. Vandenberghe, in the living room, heard Kim screaming in her bedroom and then she heard some sounds of slapping. She went into the bedroom and spoke to Jennifer Popen who was there with Kim. She asked Jennifer Popen what was wrong. Jennifer Popen replied that Kim had wet the bed and would be left there. Mrs. Vandenberghe protested that Jennifer Popen should change Kim's bedding, but Jennifer Popen refused. Kim was left in the corner of her bed, shaking and crying and then

falling to sleep. Mrs. Vandenberghe was in Kim's bedroom only momentarily. She saw no mark of injury upon Kim at that time.

On another occasion Mrs. Vandenberghe saw "a bruise around [Kim's] whole neck." Mrs. Vandenberghe did not know how that bruise was caused, but Jennifer Popen told her it was caused by a dress which was "too tight."

On another occasion, again during the last three or four weeks of her life, Kim was sitting in her chair when she became ill and vomited. Jennifer Popen slapped Kim from her waist to her shoulder, administering perhaps six slaps which Mrs. Vandenberghe described as not being "gentle," but as being "hard enough." Mrs. Vandenberghe did not regard Jennifer Popen's actions towards Kim on that occasion as being appropriate. She expressed her disapproval to Jennifer Popen.

Mrs. Vandenberghe spoke of the cut in Kim's bottom lip. This was the mark Mr. Vandenberghe had mentioned. She said it looked like a coldsore, but did not heal properly. She had seen Kim picking at it. It was as visible as shown by a photograph of Kim taken after her death.

Mrs. Vandenberghe had also seen the injury to Kim's finger which Mr. Vandenberghe had mentioned in his testimony. She said it appeared to have been a blister which had broken.

Mrs. Vandenberghe had seen a similar injury, like a cut which had not healed on one of Kim's toes.

She had seen a bruise on Kim's cheek.

Mrs. Vandenberghe said she had asked Jennifer Popen about each of these injuries to learn the cause of each. The following questions and answers then ensued during her testimony:

"Q. What did she say?

A. There's a few stories for each one.

Q. She wouldn't even tell the same story about each injury consistently?

A. To me she told one and then she'd tell one of my friends a different one and she'd tell me and I'd go back and tell Jennifer and she'd say: 'Yeah, I told you the wrong one; that was the right one,' and you didn't know which one to believe really.

A. So, you didn't believe it?

Q. No, not really."

Mrs. Vandenberghe was asked about Mrs. Lo's relationship with Jennifer Popen and with Mrs. Vandenberghe. I am satisfied that apart from one incident prior to Kim's return home in May, 1976, there was a pleasant enough, but quite limited contact between Mrs. Vandenberghe and Mrs. Lo. If Mrs. Vandenberghe were in the Popens' apartment when Mrs. Lo arrived, either to escort Kim on a visit to her home or to make a visit on her own after Kim's return, Mrs. Lo occasionally inquired of Mrs. Vandenberghe as to the conditions in Kim's home. Any such inquiry was general in nature and was not addressed to the matter of Kim being mistreated. Mrs. Vandenberghe responded. Her responses, with one exception, contained no mention of any problems. Mrs. Vandenberghe was not asked such a question at any time after she observed the two incidents of Jennifer Popen's slapping Kim. It was not clear from Mrs. Vandenberghe's testimony, but it would seem that no question as to her observations was put to her by Mrs. Lo after Kim was returned home in May, 1976.

Mrs. Vandenberghe said she was always available had Mrs. Lo sought her out to make any inquiry. She said she would have replied to any question. Mrs. Lo had not sought her out at any time, but merely spoke to her if she was in the Popens' apartment when Mrs. Lo arrived. She had always answered Mrs. Lo's questions.

Mrs. Vandenberghe impressed me as being a caring mother to her own children, with a concern for children in general. She seemed to me to be a forth-right person who, because of the location of her home, had become involved in Kim's life. Perhaps it



was in retrospect, but she seemed to feel some sense of guilt because of Kim's tragedy. While prepared to assume some such sense of guilt, she quite properly and correctly felt that others should feel at least equally guilty and probably should feel a greater sense of guilt.

It perhaps was Mrs. Vandenberghe's forthright nature that led to the one exception to the essentially pleasant relationship between her and Mrs. Lo. It occurred during one of Kim's visits to her home before May 27, 1976.

Mrs. Vandenberghe was aware of the fear that both Annals Popen and Jennifer Popen had that if Kim were to come to any harm, no matter how caused, the Society would again remove her and perhaps seek permanent custody. She spoke to Mrs. Lo about that fear, pointing out that it was leading to severe restrictions upon Kim's play and normal childhood activities. She had told Mrs. Lo that children suffered bruises in normal play and that on one occasion Kim had had a bruise when she arrived home for a visit. I gathered there was really no resolution of the discussion even though Mrs. Lo agreed that children do get hurt at play.

In her turn, as it were, while Mrs. Vandenberghe stood ready to answer any of Mrs. Lo's queries, she did not approach Mrs. Lo or anyone at the Society at any time in any way even after the incidents of slapping which she had witnessed. She had told Mrs. Lo of her willingness to help Jennifer Popen if help were needed.

That lack of approach would seem to be an example or variation of the phenomenon which was mentioned in the report of the Farina Committee and commented upon by Mr. Petersen during the Inquiry. I have set forth in this Chapter an extract from the report of the Farina Committee and a review of some of Mr. Petersen's testimony.

In Mrs. Vandenberghe's instance her decision to withhold any approach to Mrs. Lo, and thus any report upon the incidents she had witnessed, was not based upon any condonation of Jennifer Popen's actions. On each of the two "slapping" incidents

Mrs. Vandenberghe disapproved of Jennifer Popen's conduct and told her so.

Despite Mrs. Vandenberghe's disapproval of Jennifer Popen's treatment of Kim on at least the two occasions, the following exchange of questions and responses occurred during her testimony upon the Inquiry:

"Q. But you knew that Mrs. Lo, in any event, you knew that Mrs. Lo was enquiring?

A. No. She didn't ask, and to me, I don't butt in.

Q. Well, she asked how Kim was doing, didn't she?

A. When she was bringing her home for visits.

Q. All right.

A. I did not talk to her when Kimmy come home to stay.

Q. Well, Mrs. Lo was opening up the area that you could talk about how Kimmy was getting along when she came home on visits?

A. She asked me once.

Q. All right. What I want to know is, Mrs. Vandenberghe, if you were concerned about the two incidents?

A. Yes, I was. I already told you I didn't think it was right.

Q. All right. Why didn't you inform Mrs. Lo...?

A. But, how may I to say "You can't hit your child for doing that"?

Q. Well, it might help...

A. Why? I - I hit my children. Does that to say somebody's going to call on me?

Q. As a parent, you were concerned about Mrs. Popen on at least these two occasions hitting her daughter?

A. Yes.

Q. Looking back on it now, don't you think it might have been helpful to Mrs. Shirley Lo if you'd told Mrs. Lo that these two incidents had happened?

A. Yes. I feel guilty enough. All right?

Q. All right.

A. I'm not the only one.

Q. Mrs. Vandenberghe, we're not trying to blame you. I'm just asking if it would have helped. And you can agree with me, can't you Mrs. Vandenberghe...?

A. No, I can't.

Q. That Mrs. Lo was around between the end of May 1976 and the death of Kimmy? She was around the house?

A. All right. Could she not knock on my door and say 'Can I speak to you?'

Q. She could have come up to see you?

A. Yes, she could have.

Q. Or you could have gone to find her?

A. Well, maybe I could have. I didn't think nothing of it then."

It would seem that Mrs. Vandenberghe was prepared to tell Mrs. Lo, or anyone, of the incidents if she were asked, but she was not prepared to volunteer the information. She was not going to "butt in." In addition she was expressing a part of the



phenomenon mentioned in the report of the Farina Committee. She did not feel that a parent's slap administered to a child, even inappropriately, without more, merited a report to any authority or social agency.

Mrs. Vandenberghe's position is similar to that of her husband in that she would have been justified in reporting her concerns to Mrs. Lo or otherwise pursuant to section 41 of The Child Welfare Act. Even if the Society chose not to act upon her report, she would have been entitled to the protection of section 41(2) of that statute.

In my view, she, unlike her husband, was required by the application of section 41 of The Child Welfare Act to report her concerns. She was not asked, but I presume that, like so many others who testified upon the Inquiry, she was not aware of the provisions of that section.

Though not as aware as Mr. Vandenberghe, she was aware of some of the past events in Kim's life and the resulting involvement of the Society. She had seen all of the marks of injury to Kim that Mr. Vandenberghe had seen. She had also seen the bruise on Kim's neck and the injury to her toe. Most importantly she had witnessed two incidents of corporal punishment of Kim by Jennifer Popen. She had felt each was inappropriate. She had protested Jennifer Popen's action in leaving Kim in a wet bed. She was aware that Jennifer Popen told "stories," lies, as to the cause of injuries to Kim. She was concerned about and suspicious of the circumstances to such an extent that she spoke to Mr. Vandenberghe about her suspicions that all of Kim's injuries were not the result of accidents.

Taken together all of that was sufficient information of physical ill treatment of Kim and her need for protection to require Mrs. Vandenberghe to make a report pursuant to section 41 of The Child Welfare Act.

As I have written in relation to her husband, it is my view that Mrs. Vandenberghe's failure to report her suspicions as required did not contribute to the ultimate tragedy. All of what I wrote to explain that opinion in respect of

Mr. Vandenberghe applies equally in respect of Mrs. Vandenberghe. I am not disposed to think that the opinions and decisions of Mrs. Harvey and Mrs. Lo would have been changed as a result of anything Mrs. Vandenberghe might have told them.

I am mindful of Mrs. Vandenberghe's testimony, which I accept, that she had told Mrs. Lo that if Jennifer Popen needed help she needed only to call on Mrs. Vandenberghe who would do her best to help. That was a clear offer to assist in anyway she could. I am also mindful of Mrs. Vandenberghe's testimony, which I accept, that while Mrs. Lo had casually in Jennifer Popen's presence asked questions about Kim's care earlier in 1976 she had not at anytime actively sought out Mrs. Vandenberghe for information and, for some time prior to Kim's death, had not even asked questions as she had done earlier.

I am aware that Mrs. Vandenberghe is not in any way trained to deal with or to detect instances of abuse of children. While persons who are so trained would have been expected to recognize that some of what Mrs. Vandenberghe observed were indicia of the possibility that Kim was being abused, it is only fair to Mrs. Vandenberghe to say that she did not recognize the full implication of what she observed. She should not be expected to have made that recognition.

It must also be noted that the events which raised Mrs. Vandenberghe's suspicion occurred in a relatively short period of time. That was at most from May 27 to August 11, 1976, but Mrs. Vandenberghe's suspicion was not really aroused until the last three or four weeks of Kim's life. Even then neither incident of slapping made any mark of injury to Kim. Mrs. Vandenberghe did not know how Kim's injuries were caused. Apart from the two incidents of slapping, Mrs. Vandenberghe had not observed any physical mistreatment of Kim.

If time had not run out on Kim, Mrs. Vandenberghe might have been able to analyze and assess what she observed. She might then have sought out Mrs. Lo or someone at the Society.

While all of that may not be a justification for Mrs. Vandenberghe's not having made any

report as required, it certainly is, to me, a strong factor in mitigation of any criticism of Mrs. Vandenberghe.

Another neighbour who testified was Deborah Evelyn Ginn who, at the age of 15 in July, 1976, was engaged to "baby-sit" Kim during the day time while Jennifer Popen was in hospital for the birth of her next baby.

Miss Ginn knew Mrs. Vandenberghe, but had been in the Popen home on only one or two occasions before she began her duties. She had not seen any marks of injury on Kim on those occasions. On one such occasion Jennifer Popen had slapped Kim on the upper part of her leg as a form of discipline to enforce Jennifer Popen's direction to Kim to stay on the couch. Kim appeared to be afraid of Jennifer Popen.

Miss Ginn saw, and, with her mother, treated an injury to one of Kim's toes while Jennifer Popen was in hospital. Jennifer Popen had told her that Kim injured the toe on her crib. Miss Ginn said the mark of the injury was round. The injury appeared to have been a burn and to have become infected. It was more or less raw and open. Miss Ginn and her mother treated it as such.

Miss Ginn noticed a sore on one of Kim's fingers. It too appeared to be a burn. Jennifer Popen told Miss Ginn that Kim burned it by putting it in a base plug, an electrical outlet.

Miss Ginn also saw a small bruise on Kim's cheek. It appeared to be healing. Miss Ginn saw all of this when Kim awoke on the first morning of Miss Ginn's duty. She mentioned these injuries to Annals Popen who seemed to be aware of them. He later provided ointment to be applied.

These were three injuries that a young girl saw. One was serious enough to cause her to ask her mother for help. Had Mrs. Lo been as observant as that young girl she could easily have seen those injuries.

The injury to the toe might have been concealed by a sock, but if Mrs. Lo had examined Kim,



removing clothing in the process, she would have seen it.

Miss Ginn was responsible for getting Kim up in the morning and ready for bed at night and for her care between times, including changes of clothing. She did not notice any enlargement of Kim rectum or vagina. She could not remember having noticed any rash in those areas of Kim's body.

Miss Ginn testified that she did not regard the marks she saw on Kim as being unusual for a child such as Kim. She was not alarmed by them. She accepted Jennifer Popen's explanations.

Miss Ginn said that Kim and Annals Popen seemed to have a good and happy relationship. Annals Popen disciplined her by talking to her to explain the reason for discipline. He was patient with her. He did not slap her. He seemed to be a loving and indulgent father. That assessment of Annals Popen is similar to Mr. Vandenberghe's assessment of him.

Miss Ginn was under no duty to make any report under section 41 of The Child Welfare Act.

## Chapter XXVI

### The Role of the Ministry of Community and Social Services

In Chapter II of the Report I set forth a quotation from Petronius together with some comment thereon. I suggested then that that quotation was appropriate as one considered the role of the Ministry of Community and Social Services in Kim's life. As I prepared this Chapter of the Report the appropriateness of that suggestion became more apparent.

So that readers of the Report might for themselves consider the application of Petronius' statement to the affairs of the Ministry of Community and Social Services, that statement, as quoted during the Inquiry, was:

"We trained hard, but every time we were beginning to form up into teams we would be re-organized and I was to learn later in life that we tend to meet any new situation by re-organizing and a wonderful method it can be for creating the illusion of progress while producing inefficiency and demoralization."

For brevity I will call the Ministry of Community and Social Services, the "Ministry" and the Minister of Community and Social Services the "Minister." If the context permits, the term the "Ministry" will include the Minister and members of the staff of the Ministry.

If the context permits, I will usually call children's aid societies, individually the "society" or collectively the "societies" as the case may be. As I have done elsewhere in the Report I shall call the Children's Aid Society of the City of Sarnia and the County of Lambton the "Society."

While the Ministry had very little direct involvement in Kim's case during her lifetime, the

Ministry's policies and practices had an important effect upon that case. During her lifetime the Ministry was informed of Kim's case, but did not take advantage of the opportunity thus afforded the Ministry to take an active interest in its management.

It is my intention to divide this Chapter into five parts. Each part will deal with a separate or distinct facet of the complex and pervasive role of the Ministry in Kim's life. Those several parts will bear captions as follows:

- (I)           General Review of Statutory Powers and Duties - The Child Welfare Act and Regulations thereunder
- (II)          The Duty of the Director appointed under The Child Welfare Act to Advise and Supervise and Inspect the Societies
- (III)         Financial Affairs
- (IV)          Standards of Service
- (V)          Records, Returns and Reports

A brief review of the history of the development of a system of child welfare in the Province of Ontario may be of assistance. It is based primarily upon the testimony of John Kenneth Macdonald who, when he testified upon the Inquiry, was Area Planning Co-ordinator for the Ministry. From May, 1974 until May, 1978 he had been Director, an office established under the provisions of The Child Welfare Act, hereinafter usually called simply the "Act."

The Act and other statutes assign duties to the holder of that office. The holder of that office is sometimes called the Director of Child Welfare or the Director of the Child Welfare Branch of the Ministry. In this Chapter the person so appointed shall usually be called the "Director."

Mr. Macdonald did not hold himself out as an historian of child welfare, but offered what he called "a rough general outline of the history of the child welfare movement in Ontario." I accept it as



such and as sufficient for the purposes of this Report.

From what he said and from some of the testimony of other witnesses, such as Mr. Raymond Wryzykowski Past President of the Society, it would seem that there have been certain tensions between the societies and the Ministry as a result of the relatively recent and growing involvement of the Ministry with the societies, particularly in financial matters. That involvement of the Ministry is, or is regarded by some to be, an encroachment upon the autonomy of the societies.

That history of the development of the system of child welfare in Ontario covers a relatively short period of time. The first society was formed about 1874. It had resulted from the concern of a newspaper reporter, John Kelso, for a number of children, probably orphans, in downtown Toronto. That society was privately organized and funded under the auspices of a church. About two years later a second society in Toronto was organized and funded under the auspices of another church. About that time a similar society was organized in Ottawa under private as well as church auspices. These societies were charitable organizations organized pursuant to general statutes or law. There was no legislation specifically authorizing or regulating their organization. They were primarily funded and operated by churches. Neglected or orphaned children were their primary concerns. After that beginning, societies to provide services to children were formed in various communities throughout the Province.

At some time in the 1920's a Superintendent of Child Welfare was appointed by the Province of Ontario. The Superintendent of Child Welfare was responsible for overseeing the societies which had been formed. Mr. Macdonald understood that no funds were provided to the societies by the Province of Ontario until the 1940's when some provincial funds were provided primarily to assist in meeting the costs of children in the care of the societies. He was not aware that any provincial funds were then applied towards the cost of other services furnished by the societies.

Prior to 1965 a number of statutes affected various facets of services to or respecting children, including one statute entitled The Child Welfare Act enacted in 1954.

In 1965 The Child Welfare Act was re-enacted. The re-enactment effected a number of amendments. For the first time in Ontario the Provincial Government became involved in the provision of funds to the societies for expenditures other than for the cost of maintenance of and provision of services to children in their care. The Province of Ontario agreed to assume a substantial portion of the costs of the full range of services provided by the societies. The municipalities in the Province were required to assume a portion of the costs of societies operating within their boundaries. Some of the societies had other sources of funds, such as donations or bequests, which funds could be used to meet particular purposes outside the scope of budgets subject to the control of the Ministry.

The Act was amended from time to time after 1965 to permit the provision of additional services to families and children. Essentially the Act in force during the months of Kim's life was the statute enacted in 1965.

After Kim's death the Act was further amended and, in 1978, it was superseded by The Child Welfare Act, 1978 which came into force in 1978 and 1979.

When Mr. Macdonald testified his remarks were related to the Act as it was at the time of Kim's death and shortly thereafter.

Mr. Macdonald understood the basic intent of the Act was to ensure that children are protected from abuse and exploitation and that they enjoy a basic, decent standard of life.

Mr. Macdonald said that the primary role of the Ministry was to provide funds to the societies. From the testimony upon the Inquiry it would seem that the Ministry shared Mr. Macdonald's view. The organization of the Ministry in relation to the financial affairs of the societies and the activities of the Ministry in that regard indicate the great

importance placed by the Ministry upon budgeting and financial accounting procedures and reporting.

The Ministry appears to have had little difficulty in establishing and maintaining that portion of its organization. Other portions of its organization, related to what were regarded by the Ministry as secondary or other roles, were not so well established and maintained. It was in connection with those so-called secondary roles that the situation described by Petronius became most evident.

I accept that financial controls and accounting are important. I do not accept that the provision of funds is the "primary" role of a Ministry having responsibility for the administration of the Act, a statute which, on Mr. Macdonald's testimony, is intended to ensure the protection of children from abuse and exploitation and to ensure that children enjoy a basic, decent standard of life.

For some years there have been about fifty societies in Ontario. All are incorporated as required by the Act. Not all of them include the words "children's aid" in their corporate names.

Mr. Macdonald's opinion was that operation of the child welfare system in Ontario was viewed, by those involved in it, as a co-operative venture undertaken by the Ministry and the societies.

He said the Act "fairly well defined" the duties of the societies, but there were ongoing questions as to the correct interpretation of those statutory duties.

He spoke of the provision of the Act whereby each society, through its board of directors and local director, was given responsibility for the administration of the Act within the geographical area served by it.



## PART I

### General Review of Statutory Powers and Duties - The Child Welfare Act and Regulations thereunder

I now proceed to a discussion of the powers given to and duties imposed upon the Ministry by the Act. That will include the powers and duties of the Director appointed for the purposes of the Act. The Director is an official within the Ministry. The Ministry is responsible for the administration of the Act.

The Director's duties under the Act are described generally in section 2 of the Act. In brief, insofar as they relate to the Inquiry, those duties are to advise and supervise the societies and to inspect or direct and supervise the inspection of the operation and records of the societies. The Director must perform such other duties as are prescribed by the Act or the Regulations made thereunder or by other legislation.

The Act gives certain powers to the Lieutenant Governor in Council. By section 18 of the Act, if, in the opinion of the Lieutenant Governor in Council, a society is unable to perform its duties the Lieutenant Governor in Council may appoint a board of directors of that society. By section 19 of the Act, the Lieutenant Governor in Council may, upon the recommendation of the Ministry, dissolve a society. I note that section 18 of the Act does not contain reference to any recommendation of the Ministry, but I presume that in practice any exercise of the power given by that section would be based upon information or advice from the Ministry.

Section 12 of the Act requires monies to be paid to each society out of monies appropriated by the Legislature. Other sections of the Act, particularly sections 8, 9 and 11, and the Regulations made under the Act, particularly sections 2 to 4b thereof, prescribe the procedures for the determination of the amount of any such payment. Other sections of the Act and Regulations apply to certain capital grants which are not the concern of the Inquiry.

By the Act each society must each year prepare an estimate of its expenditures for operations "for the year next following." It must file that estimate with the Director and each municipality in the area it serves. The Director is to fix the date by which such filing must be made. I shall call that estimate the "budget."

Assuming that the society's budget is satisfactory to the municipal councils, the Ministry may approve it or follow procedures to vary it. Those procedures require notice to the society and to the municipal councils which are concerned. If the society or any interested municipal council does not agree with any variation of the society's budget proposed by the Ministry, it may request the Ministry to refer the matter to a child welfare review committee. Such a committee reports its findings and recommendations to the Minister whose decision, made following such report, is final. The findings and recommendations of such a committee are made available to the parties concerned.

Sections 11 to 21, inclusive, of the Regulations made under the Act follow the caption "Standards of Service." Those sections set forth the qualifications required of those persons holding positions as local directors, supervisors, social workers and social work assistants within the societies. They require each society to employ "adequate supervisory staff for its social workers."

Those sections of the Regulations require a society to follow certain procedures upon receipt of any complaint respecting children in need of protection. They require the society to prepare and record a plan for each child in its care and to review that plan regularly and to amend it as required. They require the society to arrange regular medical and dental examinations of each child in its care.

I recognize that some of those Regulations impose duties upon the societies. I set them forth in this Chapter solely in relation to the earlier statutory provision requiring the Director to advise and supervise the societies and to inspect their operations and records.

## PART II

### The Duty of the Director to Advise, Supervise and Inspect the Societies

In considering these duties of the Director and the manner in which they were performed or neglected, the aptness of Petronius' statement becomes apparent.

Upon the testimony of Mr. Macdonald and others, some of whom were or had been employees of the Ministry, I am satisfied that the Director did not adequately fulfill the duty to advise, supervise and inspect the societies. The Ministry is responsible for the Director's failure to fulfill that duty. The Ministry may be the cause of the Director's failure.

When the Act, as re-enacted in 1965, came into force, the Ministry, or its predecessor in responsibility for the administration of the Act, established a Child Welfare Branch within the Ministry. I may hereafter call that branch the "Branch."

I understand the testimony to be that from the outset the Branch maintained close supervision of the financial affairs of the societies and required annual financial audits and monthly financial statements to be submitted by each society. The personnel involved in that aspect of the Branch's operation remained relatively stable.

The Ministry's supervision of the operation of the societies and their records, apart from financial affairs, was less strict and less consistent.

During all of Kim's life there were fifty-one societies in Ontario.

To gain some indication of the scanty supervision of the societies by the Ministry, the Director and the Branch, one must look at the testimony as to the staff and organization of the Ministry charged with responsibility for that function.

Mr. Macdonald was asked how the Ministry had fulfilled its statutory duty to supervise and inspect the societies. The question was addressed to



a consideration of the situation in 1975, but the answer was more far-reaching.

The initial question and answer, as recorded in the transcript of the proceedings of the Inquiry, together with certain comments or supplementary questions, were as follows:

"Q. The responsibilities assigned to the Ministry by the Act of supervising children's aid societies and inspecting and directing them, I think we had better get into that area now if we may. How did the Ministry supervise and inspect local children's aid societies in 1975 particularly?

A. OK. Can I go back?

Q. Sure.

A. To maybe '74. In the ten years actually since the 1965 Act there has been a rather cyclical approach to supervision.

HIS HONOUR: What kind of an approach?

A. I called it cyclical because it has varied and altered through the period, and I'll explain that, in that up until about 1968 or 1969 the Ministry utilized professional field consultants as the primary source of supervision and contact with the children's aid societies.

In 1969, and I can't speak to the primary reasons a number of the professional staff left the Branch and again not speaking to the reasons, it was determined to try to work with a combination of professional social workers as field consultants and what were called field readers, whose responsibility was to do a statistical survey and analysis of cases among the children's aid societies in each year. That method worked until 1974, I think 1974 was the last of the survey approach to the supervision of children's aid societies, and after that, and I'll get back to this in a

minute, we looked to restoring supervision through professional consultants rather than through the use of the field unit.

In 1974 there were a small group of field consultants and a small group of the readers totalling I think 7 or 8 at that particular time. In 1974 which was the year that the Ministry went into re-organization and the objective was to differentiate between program development and program delivery, and this was a result of the Hanson task force which recommended that and recommended an awful lot of things about how the Ministry must take a more significant role in the development and enforcement of standards. In 1974 or actually in '73 it began. The Ministry launched a very significant project to develop an integrated case management information system. This system was designed and initiated with the objective of insuring that the kind of information at that time provided by the field workers would be available automatically through a standarized, provincial-wide information system required from the societies who would report on the progress of cases, and would report in much more specific details through automatic information systems, the status quo of various cases. It was also designed to assist the manager, the local director, the supervisory staff and the individual field worker in his own functioning with the cases. It was intended that every field worker would get a report on his own cases, every supervisor a report on his field workers cases and this is at the agency's level, every director a report on all of his cases and the Ministry as a by-product would get a report of all the cases across the province. So we were seeking to move to a much more detailed information system which would replace the function of relatively random sampling techniques of gathering sample data through the use of the field workers. They were able to do about 30% of the cases in the province, meaning they

couldn't do about 60% or 70%. We had hoped that we would be able to institute a system that would give us the same kind of information in more detail on all cases in the province. The intention to do that was a necessary prerequisite as well for the establishment of some kind of legitimate standards. The children's aid societies and ourselves have long recognized that the availability of quantitative or evaluative kind of standards has been weak, the system has been going for a hundred years and still not fully accepted approach to standards had been developed and we wanted to put some emphasis on that, but we needed this kind of quantifiable data to develop the necessary standards. So we sought at that same time to --

Q. Try and give just a little bit of the problem. This was in 1974?

A. '74 and '75, yes.

Q. OK.

A. Through a process which had been initiated, there were a great number of initiatives during that time related to the standards development. The development of the information system continued right through as a matter of fact until 1977-78 when the Children's Services Division was created and it was necessary to develop a provincial-wide information system for all children's services which made it a much more complex job, but work went on during the years 1964 through 1968 and some still continues.

Q. '74?

A. '74, sorry, '74 through a variety of committees which were joint Ministry-children's aid society committees, there was what is called the Management Information System steering the Council which consisted of both Ministry and agency representatives who co-ordinated the



development of this very complex information system, and that although it took a great deal of time is beginning to or will begin to provide I think very useful information when it becomes a part of a general system. The point is though that our intention at that time in '74 and into '75 was to replace the function performed by the field workers with a provincial-wide information system and to strengthen the advisory, supervisory monitoring role through the employment of professional consultants, professional social workers.

Q. By the Ministry?

A. By the Ministry, yes.

Q. I wonder, Your Honour, if this would be a convenient time to break?

HIS HONOUR: I think it would be, Mr. McRae, we'll take fifteen minutes, please.

--Short Recess.

--On resuming:

HIS HONOUR: Mr. McRae, please.

MR. MCRAE: Thank you, Your Honour.

Q. I think we were dealing with the major re-organization plans which commenced in 1974 as a result of the recommendation in the Hanson report. Was that major re-organization, in fact, implemented?

A. No.

Q. Would you like to --

A. And if I can pursue the chronology --

Q. Alright, sure, I don't want to break up the chronology.

A. That reorganization was major not only in a sense of a structural reorganization

but it was also major in a sense that many, many professional roles in the Ministry would have to change: people who had been doing both service delivery and program development would have had to specialize in one or the other. There was a problem of decentralization geographically in terms that people would have had to move perhaps geographically so it wasn't an easy reorganization to implement. It was also a costly reorganization, in that in order for it to be successful and achieve the objectives it would have had to - or would have required I think significant additional manpower on the part of the Ministry to make it work.

In April, I believe, of 1975 we saw the beginning of fiscal restraint in a real sense. At that time Cabinet imposed a hiring freeze and this was the first round of a continuing series of restraint programs that continue until today; that hiring freeze, I think it was, that manpower constraint program begun at that time made it very, very difficult for the Ministry to pursue its reorganization plans because there just wasn't the flexibility to move people, to create new roles, to hire additional staff and so on.

In July, I believe, of 1975, and I should go back one step. At the same time as the Ministry was going through this reorganization, the services for the mentally retarded which was a large component of the Ministry of Health involving some 8,000 staff were attached to the Ministry of Community and Social Services so all of a sudden we had moved from a staffing level of about 3500 to a staffing level of some 12,500 or 11,500 and that put additional burdens on the Ministry's management system.

HIS HONOUR: What do you mean by that, your staff increased?

A. The total Ministry staff responsibility in 1974, I believe, increased from 3500 to some 13,000; this was added to the Ministry without a change in the basic design of the superstructure of the Ministry of the senior management personnel. So it was culmination of the dynamics of the growth of the Ministry overnight and the restraint programs which were just beginning led, I believe, and I must say I was not privy to the management meetings that made the decisions, but my understanding is that it led to a conclusion that we would not be able to go the route of separating program development from program delivery and elected to continue on at least during constraint programs with an organization which was halfway.

Q. Right. Now, just so that it's clear and it is a little difficult to follow, in 1973 or early 1974 the field supervisor program was cancelled or allowed to expire?

A. No, I don't think that's the proper way to put it. The Branch, the Child Welfare Branch, a very small component of this enormous Ministry was also working along the lines of decentralizing to the district offices and setting up a program development organization, the situation was in very much a state of flux and by 1975 all of the four field workers who knew, I think, that their role would be altered by the development of an information system and by the decentralization of responsibility had sought and achieved other employment.

Q. So by what, mid-75 there were no more field supervisors?

A. No, not field supervisors, field workers who were colloquially known as readers.

Q. Right.



A. That group of people who went around reading files and doing a statistical tabulation. By, I think, it was August or September, 1975, they had all found alternative employment. We had in our own vision of what was to come in a new branch organization and recognizing the work we were doing on information systems had resolved that we would engage again professional field supervisors or field consultants. In other words, going back to the same kind of system that existed in 1968 and which way I described it earlier as cyclical, we were back to a basic model that was in use or in force in 1968.

Q. But was there a sort of a hiatus period there where you had no field readers?

A. That's right, and I'll try to carry this through in terms of the dynamics of staffing through those years, and the dynamics of staffing were intermingled with manpower constraints, organizational planning and change in roles that we were attempting to introduce.

As I said in April '75 the freeze on hiring which was a universal constraint came in and by, I think, July of 1975 the Ministry determining that we would live with the organization as it existed at that time because the possibilities of reorganization were pretty handicapped by manpower constraint. Alan Gordon at that point, who was Assistant Deputy Minister of Program Development undertook the responsibility for the MR component of the Ministry's operation.

Q. The which?

A. He became Assistant Deputy Minister of Developmental Resources and his management responsibility then became the Mental Retardation Services of the Ministry, those 8,000 staff that had come to us in the Spring of '74.

The operational part of the service delivery part non-mentally retarded, was transferred to Mr. John Anderson, who became Assistant Deputy Minister of Social Services and the organization intention at that time was that we would continue with our mixture of district operations out on the field and central branches with some continuing responsibility internally.

Q. But there was a period, a hiatus between the fading away of the field readers and that type of supervision and the proposed consultant types?

A. There was a hiatus between the fading away of the field readers and the replacement of them with field consultants.

Q. Right, and how long was that hiatus?

A. It was a considerable hiatus.

Q. A couple of years?

A. Yes, it was up to the beginning of 1977. OK. Now, the reason for that considerable hiatus related to a variety, quite a variety of circumstances, not the least of which was manpower control, the reduced complement at various stages during that period, coupled with a problem that we had in recruiting. You've got to remember that when the manpower control system was introduced a commitment was made to existing staff in government that those whose jobs were declared surplus would be entitled to jobs within government and have first entitlement. So, one thing that was eliminated from time to time during that period was external recruitment, we were not able to go outside to get staff.

Q. You had to take staff inside?

A. We had to take staff inside and we also - if we were not able to find staff inside we had to go through a recruitment process

to screen out anybody within the government who might have been interested in an open position before we were able to recruit outside and it wasn't until November, I think, of 1976 that we were finally able to advertise outside. There are other problems associated with that recruitment process: one of them being that we sought in our field consultants people with the equivalent qualifications and experience of an Agency local director. Traditionally in the Branch the objective was to recruit people who have had administrative and program responsibility in child welfare.

Q. Well, I understand the problems that you had but what was the net result of it really, you know, as far as the supervision of an individual society goes? I mean I want to give you an opportunity to explain your problems too, I don't mean to put you off but I'd like to get to the meat too.

A. OK, if I could just finish that point. We weren't - the delay in supervision which led to the lack of replacement of the four readers with field consultants was related to internal recruitment problems, the fact that --

Q. This was restraints?

A. The fact that we couldn't advertise externally and the fact that we were non-competitive financially with the external people that we wanted to hire and that took a considerable period of time to overcome those problems, coupled with the fact that we had to go through an exercise of re-designing the Child Welfare Branch in order to fit the existing situation at that time and gain approval for what we were hoping to do with a new organization. Every time a new organization is introduced in government it requires a significant degree of external Ministry approval. OK. The net result was that - I think I have - somewhere here is a kind of a chronology of staffing levels of the Branch through the



period - well, actually through the period of '71 to '78 and this is handwritten at this point.

In 1975, to the period of August 1975, when the last of the readers left the Branch the basic professional staff of the Child Welfare Branch who were relating to the children's aid societies, and you have to remember that there are other staff in the Branch relating to other parts of the child welfare system. To August of '75 - let's go back a step. In '71 there were nine people in that category including the four field workers or readers.

Q. Right

A. In '71. In '73 there were nine as well. In '74 one of the field consultants left either in late '73 or early '74, before I went to the Ministry, and the complement of professional staff including the readers relating to Child Welfare was eight. From the period September to December in 1974 one of the field readers left and the total staffing was seven. January to August '75 it remained basically at seven. Between September and December '75 when the field readers left in August '75 or by August '75 they were not replaced and the Branch staff were four professional staff working with the agencies: that remained at four until the end of '76 and by March of '77 we had hired four additional field consultants and it was then up to eight and we also appointed a program development specialist to deal with programs because we now had to have the two sides of the responsibility, and that continued until June of '78 when three additional staff were assigned to the Branch to conduct a provincial-wide survey of child abuse cases. So that the period--

Q. You say from August '75 until?

A. Until the end of roughly December of '76.

Q. There were only four?

A. We were down to four.

Q. For the whole province?

A. For the whole province but that four is represented by the field workers. The professional staffing, the field consultation staffing, the administrative staffing remained relatively constant."

All of that was supplemented by one series of Mr. Charko's responses to questions which began with a question as to the role of the field consultants. That series of questions and answers was recorded as follows:

"Q. Now, can you tell us basically, Mr. Charko, what the role and the responsibility of a field consultant is with respect to local children's aid societies and can you tell us first of all, how many of them there are?

A. At the present time there are three full time field consultants and two half time field consultants. The reason I'm saying half time is because they are also supervising institutions, boarding homes and charitable institutions, another half of time.

Q. And you're their supervisor, is that correct?

A. And I'm in charge of field services. At the same time I supervise directly some Societies.

Q. Oh, on your own?

A. On my own, right.

Q. Would that be the Metro Toronto Society?

A. I'm involved with two Metro Societies, mainly on the program area and Mr. Magder

who's Assistant Director, deals with financial and administrative matters and I was supervising directly those two Societies from 1971 until March of 1977. Also I'm supervising directly Kent County, and partly involved with this Society.

Q. All right. How many children's aid societies do you have to so supervise?

A. There are fifty children's aid societies in Ontario at the present time.

Q. And in the years 1975 through 1976, how many were there?

A. There were fifty children's aid societies.

Q. All right. Now, I'd asked you what the role and the responsibility of the field consultant is, perhaps I might take one step back from that and ask you for what period of time has the field consultant been in operation as such?

A. Historically it goes away back probably about seventy-five years. The role I think was, it differs at the different times.

Q. Well, let's talk about modern times and let's talk about the seventies?

A. I would say really the role changed to some degree from 1965. In 1965 the new legislation was introduced, at that time the Branch had about eight field consultants. They were called Child Welfare Supervisors and it's only from 1976 the Child Welfare Supervisors begun to be called or known to be as a field consultant in a sense playing a double role of supervising where necessary and providing consultation in other types of situations. Even during that time up to I would say 1974, the field consultants were more involved directly with the, identifying weaknesses in children's aid societies, would that be in the area of programs, in

the area of management and public relations, policies and so on, we would assist, would recommend at times changes in the societies. At the same time there were field unit that went to (tape inaudible) identify certain area and would bring to the attention of field consultant or myself as a supervisor of field services. Up to 1974 in most situations the Child Welfare Branch attempted to hire people who had both program experience and management experience. Up to that time mainly at the time I was hired all of us in the Branch were formerly, with the exception of one person, were former local directors. Miss Betty Graham was a local director before Rene Charboneau, Mona Nelson, senior supervisors or local directors.

Q. I see, right. Now, could you go on then to delineate the role and responsibility of the field consultant vis-a-vis each local agency, what should they, what are their duties?

A. Their duties as I say is to provide consultation and in any difficult areas of every day's operation. If society would have some difficulty, would that be staff management relationship, either the local director or senior staff might get in touch with the supervisor and ask to come up and discuss. In some cases it might be a situation that to assist in staff training. In some situations it might be to restructure the whole operation and this would be usually on invitations from the children's aid society. Sometimes is on invitation also from the board. We attempted to more and more, at least I was putting more emphasis to get actually involved with the board because our legislation Child Welfare Act really provides for involvement with local directors. There is only one reference in our legislation that says, the local director of children's aid society shall cooperate with the Director. That means with the provincial Director. There is no reference to board of directors,



therefore, but at the same time as we know, the board of directors is responsible for the corporation because the corporation children's aid society, every children's aid society is incorporated under Corporations Act and the board as such is responsible for introducing policies, the hiring of staff and so on. For this reason we are not getting directly for example in hiring staffs and there have been situations where the Branch disagreed at times with the board on a selection of local directors. For this reason I always felt that we need a closer relationship actually with the board and administration and then get to the level of the line staff that, as I said, at different times this changed, because from 1974 to some degree this involvement was not as great I would say as previously because if we went to review organization because the Ministry was planning to decentralize and at the same time I would say the boards of children's aid societies more or less were saying openly and publicly even, you can read the papers from 1973, '74, '75, where you will find that either Association of Children's Aid Societies or individual boards were asking the Province, the Ministry, to provide funding, but more or less stay away and say, we are capable of providing, we have the staff, we are going to provide the service, we assume full responsibility.

Q. All right. Now, you're saying that then up to 1974 as far as let's say your own experience as being supervisor is concerned, up to 1974, there is more involvement by the local or the field consultant with local agencies, just generally speaking, than there was after 1974?

A. I would say in general, however, I have to clarify one point. If any society even if we were short of staff, but if any society wanted any assistance I always tried to come up and I think this Society can say by the time their staff came to

work 9:00 o'clock, I was here by 9:00 o'clock from Toronto to attend the meeting.

Q. All right, so they could always ask and request?

A. That's right.

Q. Well fine, but you're saying that the routine, let us say, of the field consultant was shortened as opposed, you know, with respect to every local agency?

A. As far as direct visit I would say...

Q. As far as a direct visit?

A. But we tried to maintain the contact...

Q. Sure.

A. Telephone, correspondence, as much as possible.

Q. All right. Now, who was the field consultant who was responsible for the Lambton County agency in early 1970's up to '74?

A. Up to, actually there were two periods, I joined the Ministry in October of 1968 and shortly thereafter the Lambton County was assigned to me. At that time I had a responsibility for about sixteen children's aid societies and so I visit, I believe first visit was around second part of February of 1969 if I'm not mistaken, 26th of February 1969 and I made couple visits after that to, also because at that time Mr. Lovatt was named Acting Director for this Society and I had to make assessment of operation at that time and I submitted a report in 1969 I believe to the Director of Child Welfare, Miss Graham, and thereafter when Mr. Mainville joined I believe in September of 1970. From that date I have been the, I was transferred to Lambton County to Mr. Mainville and he continued to supervise this Society until he left the

agency in 1975, until he left the Branch in 1975.

Q. Mr. Charko, you discussed then that in 1974 or thereabouts there was a change in attitude by the Branch or the Ministry with respect to how it would treat this local Children's Aid in terms of supervision, is that correct?

A. Right.

Q. Now, was that a Ministerial decision at that time, or how did this, how was this decision made to your knowledge?

A. I don't know if I shouldn't say sort of maybe to the degree if I can use the term, to some kind of evolution in a sense this happened, because several things really at that stage happened. We had a change of director. Miss Betty Graham left the Branch in January of 1974. Naturally if new administration takes over it usually tries to make some changes. Hugh Hanson's report was introduced in 1974 with regard to decentralizing the whole Ministry. The Ministry was looking at that point, should we in a sense sort of decentralize and assign the consultants or Child Welfare Supervisors to specific areas or should we retain a central approach to the children's aid society and decentralize into maintenance programs and so on, so this was not definitely decided, that's one reason. As I say the children's aid societies at the same time sort of felt that it's not necessary to go and review the files constantly and so on, because what we were doing at that time we would, I would say about once a year, the field workers, we would send a few workers out and they would read practically every file, particularly in smaller societies, they might read every file, check what type of work was done and then the field supervisor would go back to the society and say such and such changes in the program or at times even administration or re-structuring of an agency, this

should take place. The societies felt that the control or at least the management I would say and the staff felt that the control on the society was too great, that maybe this society should sort of assume the full responsibility and the Province should provide the funding. The Province to some degree agreed I would say maybe unofficially, because I don't think officially we said, as of this date we are terminating such and such a unit, as of this date we won't conduct any survey. This all happened gradually, because the financial unit was left at that time from the problems that they used to come together with the field consultants to review budgets, review files, review administration and everything else. I would say that that was the reason you know, to some degree to see how the corporations would really operate individually. Then also I think the pressure from the Ontario Association of Children's Aid Societies was also in a sense under Ministry, now that you tried to decentralize, let's give opportunity for them to operate and you provide the funding."

At this point Mr. Charko spoke of his visit to the Society in December, 1977. I have omitted that portion of his testimony. It is irrelevant to the present area of the Report. Mr. Charko's testimony then continued as follows:

"Q. In 1974 then, did you specifically instruct Mr. Mainville that his duties as far as the Lambton County Children's Aid Society would be varied and that he was not to make regular visits, or how would this philosophy of the new director have been...

A. At no time I or anyone instructed me to terminate visits. I think there was sort of a limited time because of the number of staff that we had.

Q. Well, let's talk about that for a moment. Was your staff reduced?



A. That's right.

Q. And when did that happen?

A. It kind of, it was kind of gradual because I would say the reorganization was not necessarily the time really when the whole thing happened, but in 1971 the assistant director of child welfare became director of Children's Institutions at that time so the position of assistant director was left vacant. When I assumed the position of supervisor of field services the previous supervisor of field supervisors, Miss Mona Nelson, left to join the federal government. At that time already there was no assistant director, but we still retained three field consultants and myself as a supervisor of field services. When the reorganization came we and director of child welfare left on January 1, 1974. Shortly thereafter I believe it was the same month, Mr. Rene Charboneau who was the child welfare supervisor for eastern Ontario, he left, he resigned. We didn't replace him because not knowing what's going to happen with the reorganization or decentralization. Then gradually the field workers we continue, we didn't have a director, only was pro tem director was made of child welfare, Mr. McLellan, from January 1, 1974 until May, I believe, May 6th and Mr. Macdonald took over as a director of child welfare. The second supervisor left, Sil Mainville then left in '75, and still we were not sure what's going to happen with the whole structure so again he was not replaced. The field units gradually left and were not replaced, so this is actually what happened, but still at no time I, as I say and Mr. Macdonald or anyone of that, you know, don't visit the societies. I tried to visit as much as possible, and I think if I'm not mistaken, only once I had to, I think it was Fort Francis or Kenora, that they asked me to come up and I had to change the date and I said I'm sorry, I can't come up at this date, but regardless, I made every effort

to visit the societies whenever I could. The two Toronto societies I continued to visit on regular basis, practically weekly, on a weekly basis.

Q. Well, just so I understand then, from 1974 following up to the end of '77, how many employees left your particular area of the Branch that you did not have replaced, I think you mentioned about four?

A. Well field workers, actually there were six positions, but at different time, we had at one time we had four field workers and one unit supervisor that worked, because I was responsible for that unit, but at the same time we had a supervisor who was responsible and she was coordinating visiting to the Societies, sort of assisting me in certain areas of conducting surveys. The whole unit gradually left. Then the field consultants as I mentioned, Sil Mainville, Rene Charboneau, that was the time from '74, then Paul Siemens who was shortly sort of a sharing supervision for this Society. He left in December of 1976. At that time Mr. Magder came back to us, I believe in October of '76, who was previously Assistant Director and he came back.

Q. Well, from August of '75 to August of '76 then were you pretty well the only field consultant, even though you were the supervisor, were you the only field consultant who could have come upon request to visit this local children's aid?

A. Paul Siemens was with me as I mentioned to December of '76.

Q. And were you then, the two of you responsible for the whole province at that time?

A. That's correct, and also there was some support staff and also Mr. Macdonald sort of assumed some sort of responsibility, for example dealing with budget, because the

other area, what happened at the same time up to 1974, we had a financial unit of four professional accountants and one chief accountant and three other professional accountants, that unit was disbanded. Actually also they transferred, two of them went to the Ministry of Health and one transferred to another branch.

Q. Well, perhaps this is, the historical or chronological part of this would be better to get from Mr. Macdonald, but while they were not replacing people at the Ministry, were they in fact decentralizing, did they ever get into that?

A. We never physically decentralized, we discussed the different type of models, how we can sort of coordinate the services, because to some degree we were decentralized to '74 because, for example one supervisor, Mr. Rene Charboneau, he lived in Ottawa, he never moved to Toronto and he was coming to Toronto for any meeting that I would call of the field consultants. He would come to Toronto, but was always residing in Ottawa and covering eastern Ontario, so to some degree we had decentralized kind of system. The question came out, how many people would we need to cover nineteen districts, would we relay them to district offices as we have presently or would we have one Child Welfare Supervisor let's say for eastern Ontario and relate to the Queen's Park or to relate one of the Directors, these were the things that were not really clarified as physically as I say beside eastern Ontario, we did not sort of even assign to geographical area because as far as the societies, even when the new supervisor, like when Paul Siemens was hired in '71, we assigned different societies in different areas, it was not in geographic area, but to give each field consultant a mixture of large societies, smaller societies to get to feel what sort of could be done and the different type of structures.

Q. Well, we know that Mr. Mainville prepared field audit reports or audit reports of local agencies and that these ceased in about, what, 1973-74, somewhere in around there?

A. The last society, the survey was conducted if I'm not mistaken was Kenora in June of 1975, that was the last survey that was done...

Q. What was the reason for terminating that more or less check that the Ministry would have had on the local branches?

A. I don't know if I can answer that, simply as I said there was no replacement. The staff left, the last two field workers left in August of 1975 and the third one I assigned for to do the statistics because the statistician that was doing before that was part of financial unit, statistician was transferred to my unit. At that time then I assigned one field worker to do the statistics, compiling statistics that monthly come from each society. How many for example cases, family cases, children in care, changes of status of children and so on, so that staff was not replaced and I didn't have any staff to continue to conduct any surveys.

Q. Right. So then really but for receiving, if I may use the word, a distress call from a board or from a line worker as you described them, or from the local director, you on a day to day basis as supervisor of field services would not know really how an agency was functioning or you wouldn't know let's say on a yearly basis unless you received some call, would that be fair?

A. I would say that's fair, at times in some area I might get more complaints to the Minister because we had to also deal with the complaints to the Minister about any society...



Q. You mean from the public?

A. From the public. I think at times there was sort of more complaints than in another time so I might get some feel if there were too many calls from certain areas, I might either go and try and visit society or talk to the local director and say, what's happening, suddenly I'm getting from your protection department too many complaints from the clients directly or I have situations where at times when I get the feel that there is not everything going well between the management and the social workers, like staff as we call from client staff because they will phone me to interpret Child Welfare Act, to do the other things, what at times you get the feel that worker could go to his supervisor or could go to the local director and say, you know, how do you interpret Section 20 of Child Welfare Act, such and such thing or how do you sign non-ward agreement. These were at times another kind of signal that I might get at times from the, because we get as many calls and at times I sort of used to joke with some agency's staff when they complained that they have heavy case load, I said, do you want to take half of my case load, because usually many call directly with home Queen's Park, because they sort of feel if they exhaust all avenues of resolving the conflict on a local basis, then they get either through their M.P.P. or directly to the Ministry.

Q. These field audit reports, would they be read by anybody once they were submitted, let's say, by Mr. Mainville?

A. First of all I would sort of review in order to identify because the way we decide and there were different changes, because actually one of first tasks when I joined the Ministry, at that time the field consultant or Child Welfare Supervisor used to visit the children's aid societies and ask the local director or supervisor to give five or ten files, they would read

those files and then submit the report to the Branch, to the director. If in that report was some criticism the way that things were handled or certain things were identified, the staff, the senior staff at time, and this was given to the board, would then challenge and say, well that's your way of interpreting the matter and so on, so to the point that there were kind of conflicts developing between the Child Welfare Supervisors and individual agencies, and I recall specifically when I joined the Ministry they said to me, can you sit down and design some kind of survey that would be in a way to see if the children's aid societies are meeting the regulations of Child Welfare Act. For example, are they visiting, if they are not visiting what are they doing, can we identify something, so that we did the first survey was strictly on the basis if the regulations of Child Welfare Act were adhered to, then gradually we felt we need to learn something more, so we went into the area and say, can we identify for example how many cases in protection are coming for service because of alcoholic problems, how many are coming because single parents and unable to cope with the children, how many are coming for service because of mental illness. We moved to that area, the purpose for that was when we identify if we found then that let's say in northern Ontario, in specific community, the majority of cases were open in the children's aid society because of alcoholism, then we went back to the society and say, you know, don't train your workers how to find a job for the client, but train your worker how to deal with the person who has the drinking problem. So we then started to focus on specific areas. If we in another area discovered for example eighty percent, and I'm talking specifically this came out, I recall the situation, cases were referred by complaint to the children's aid society, that means police, doctors, a priest, relatives, neighbours, etc., etc., then we said to the society, and we find that the neighbouring

it's in reverse, eighty percent are self-referrals and only twenty percent are complaints, then we knew in the area where there is the only true complaint people did not feel comfortable to come voluntarily to the society and asking for service. So we would then discuss with the society, how can you change your image in the community. We might raise these areas with the boards and I recall again in several situations, then this is what we did, so we decide the type of surveys that gradually we could identify the area of needs in the community. Once we identify, then usually field consultant would go to the society and deal with the director. This was in a sense a tool. We did not form the opinion. The survey in no time gave the comment and that's why then the administrators, the local directors sort of did not know really what to do with that type of situation, because they sort of felt well the children's aid societies are trying to do the job, we're trying to find the weaknesses in agencies and then I remember that some even kind of speculated, is this what the Ministry is collecting in order to find a reason to take over the children's aid, which was not as as I say initially this was the kind of impression, but later on the majority of societies were welcoming this because then we would sit down and sometime even with the board, and say, this is the area we identify, can you develop policy, what type of service you are going to provide to the community. We identify also that for example in one area when we read the files the workers in Family Service Department are carrying forty, fifty, sixty, seventy cases and then we find in Adoption Department the worker might be carrying only ten home studies, we stop, when we identify we said to the local director, can't you transfer that worker into the other unit or assign other duties, so we try then also to spread a kind of work load. We don't talk as much about specific cases, but also the same, the work load.

Q. Now just, I'm sorry to interrupt you, but I think what you're saying, you're leading up to is the fact that it appeared that the surveys were an important tool for you, would that be a fair comment, Mr. Charko?

A. I think it was more important actually to the societies to identify weaknesses and improve the service...

Q. Yes, but nonetheless...

A. And it was also important to us."

Mr. Macdonald's answer, in its many parts, supplemented by Mr. Charko's answers, demonstrates that the statement attributed to Petronius may quite appropriately be applied to the Ministry in its many stages of organization, planning and reorganization.

With all due respect to Mr. Macdonald he may have abused the adjective "cyclical" when he used it in his answer.

If he intended to indicate that there was some pre-determined pattern whereby the quantity or quality of supervision and inspection would vary at predetermined intervals and that each point in that pattern would recur at regular intervals, he did abuse the word. I am satisfied there was no such pre-determined pattern.

What did occur were variations of the quantity and quality of supervision and inspection and after all of those variations and after all of those years from 1976 to 1978 the Ministry's supervision and inspection of the societies was essentially what it had been at the outset in 1965.

To that extent there was a cyclical aspect. It had gone full circle. But it was not planned. This aspect of the Branch's operation was maintained or was permitted to wither without any apparent conscious intention or design within or by the management of the Branch or the Ministry.

But in all of that time required to get back to where it had started there was, in the



Ministry and in the Branch, the endless presence of studies, intentions, hopes and objectives accompanied by so much seeking, looking to, development, beginning, varying, altering, restoring, recommending, continuation and reorganization. Those words, in some form, are prominent in Mr. Macdonald's answers, only one of which, in its many parts, is reproduced above.

The events of 1969 and 1970 were significant. In those years, if I correctly understand Mr. Macdonald's testimony in conjunction with that of Mr. Charko and Mr. Mainville, six of eight professional social workers then employed by the Branch as field consultants "left the Branch."

They were not replaced. No one offered any explanation for their leaving. From Mr. Macdonald's choice of words, and his manner of testifying satisfied me that he chose his words carefully, it would seem that those social workers left the Branch of their own volition and that their employment was not terminated by the Ministry or Branch as part of any specific intention or plan of the Branch to dispense with their services.

Again, from Mr. Macdonald's choice of words, it is apparent that, the field consultants having "left," the Ministry did consciously decide not to replace them with professional social workers. The Branch did consciously decide to replace those professional social workers, most of whom had served as local directors of children's aid societies, with "readers" who had no such experience or training. On Mr. Charko's testimony the "readers" were trained to conduct surveys, but they did not have the training or authority to deal with issues relating to the quality of services provided by the societies.

Mr. Charko's words, near the end of the first portion of his testimony reproduced above and near the beginning of the second portion thereof, support my assessment. He spoke of the absence of anything done officially by the Ministry. He indicated the termination of visits by the "readers" was the result of "unofficial agreement" and happened gradually.

He did not identify the parties to that "unofficial agreement." I infer it was between or among the Ministry and its staff. The societies were not parties to any such "agreement." The societies became aware of the effect of that "agreement" only if they inquired of the Ministry to learn when the "readers" would visit. Only then did they learn that there would be no more visits by "readers."

Mr. Charko spoke of "some kind of evolution." He spoke of the Hanson Report and its recommendations. He spoke of the Ministry's consideration of those recommendations and that "[it] was not definitely decided."

At another point when asked the following questions he made the following responses:

"Q. But to take this further, would you agree with me that the field unit was not simply dissolved just like that?

A. No, it was not dissolved.

Q. And that the field workers ceased to function probably by virtue of attrition as much as anything else?

A. That's correct."

Mr. Charko's words in another area of his testimony indicate that, while the Ministry was "unofficially" terminating the visits by the "readers," the financial reviews and controls of the societies by the Ministry continued.

The Ministry's stress upon financial matters was demonstrated in other areas, such as the testimony as to the number of memoranda regarding financial matters which were sent by the Ministry to the societies.

Mr. Charko's testimony referred to the nature of the relationship between the Ministry and the societies. He said The Child Welfare Act required the local director of each society to co-operate with the Director appointed for the purpose of that statute. At the same time the local director was responsible to the board of directors of

the society for the administration and enforcement of the statute and regulations made thereunder.

Mr. Charko seemed to feel that, especially from 1974 onward, there had not been a satisfactory relationship between the Ministry and the boards of directors of the societies. He related some of that problem somehow to the Ministry's plans in that period to decentralize and to some desire of the societies for autonomy.

From the testimony upon the Inquiry I am satisfied that there was very little direct contact between the Ministry and the Board of Directors of the Society. That was so even in 1974 and earlier years when, on Mr. Charko's testimony, the Ministry had more involvement with the societies through the field consultants and "readers."

Mr. Charko himself had been the Ministry's Child Welfare Supervisor or Field Consultant with responsibility for supervision and inspection of the Society from about the time of his employment, in October 1968, until Mr. Mainville was given the responsibility in or about September, 1970. Mr. Charko's first visit to the Society was late in February 1969 to assess Mr. Lovatt's performance as the Acting Local Director of the Society. He said he "made a couple of visits after that."

Assuming the accuracy of that testimony, it is difficult for me to regard three visits to the Society over a period of about twenty-four months as being very much in the way of contact. It would be even less in the way of supervision and inspection. That is particularly so when at least the first visit in February, 1969 had the one very specific purpose to assess Mr. Lovatt's performance.

Mr. Mainville in his testimony spoke of making perhaps two visits each year until 1973 to each of the fifteen to twenty societies for which he was responsible as one of the Branch's child welfare supervisors or field consultants.

The Society was one such society. Each visit to the Society was for one day or, occasionally one day and part of the next. In 1974 Mr. Mainville made only one visit to the Society. In

1975, one of the year's of Kim's life, he did not visit the Society. He resigned from the Ministry in January, 1976. There was no testimony to indicate that he or his successor or any other employee of the Ministry, let alone any field consultant, visited the Society in 1976.

In cross-examination, Mr. Mainville expressed his opinion as to the magnitude of the task imposed upon the Child Welfare Supervisors (Field Consultants) and the Supervisor of Field Services. That occurred in the following series of questions and his responses thereto:

"Q. I understood in 74-75 there were the two Child Welfare Supervisors for all of the agencies in the Province namely 50 or 51 whatever the number was.

A. Yes, I believe it was 50 at that time.

Q. And the 15 would have been the previous period?

A. No, sir. Out of 50 children's aid societies I was the designated Child Welfare Supervisor for about 15 of them.

Q. And that was '74 '75?

A. Yes, sir.

Q. But were there four Child Welfare Supervisors in '74 '75?

A. No, in '74 '75 there were two Child Welfare Supervisors. In addition, as I mentioned earlier, there was also the Supervisor of Field Services who also assumed responsibility for a number of societies.

Q. So you would have 15 and the other 35 would have been broken up between the other Supervisor and your superiors? The three of you would have covered the 50 societies?



A. Yes. I think with the exception, you would have to verify this with the Ministry but I think with the exception of perhaps maybe the two Toronto agencies who might have been covered by the Assistant Director of Child Welfare I'm not absolutely certain of them.

Q. I see, but 15 of them were your allotted share?

A. Approximately. I think as a matter of fact in '74 and '75 that after the Child Welfare Supervisor, the third Supervisor resigned, it might have been closer to 20 societies, I would think.

Q. And I gather that you would be the first to agree that this was a monumental task that one man could not possibly perform the supervision of that many societies?

A. No, certainly, sir, that's true."

Mr. Mainville testified that when he joined the Branch as a field consultant in September, 1970 its staff, including himself, consisted of the Director of Child Welfare, an Assistant Director of Child Welfare, a field services director, three field consultants and six field workers. Those latter were the "readers."

Mr. Mainville's practice in relation to his visits to the Society was to telephone Mr. Lovatt to advise him of the upcoming visit and to inquire if Mr. Lovatt wished to discuss any particular area of interest or concern. That enabled Mr. Mainville to prepare himself to be helpful to Mr. Lovatt and the Society in any such area. One such visit each year included a meeting with the full complement of the Society's social work staff to discuss the results of the most recent survey conducted by the "readers."

Each of Mr. Charko and Mr. Mainville testified that, during the period he was responsible for supervision and inspection of the Society, he was available to Mr. Lovatt for consultation by telephone if Mr. Lovatt cared to call. Mr. Charko seemed also

to indicate a willingness to visit the Society on request.

In my view no visit in the years 1975 and 1976, one visit in 1974 and two visits in each of the years 1971, 1972 and 1973 does not constitute adequate supervision and inspection of the Society by the Branch. That is even more apparent when each visit was for at most one and one-half days and when one visit in each of the earlier years was intended to discuss the survey conducted by the "readers."

The visits by the "readers" up to 1974 did not enhance any supervision or inspection of the Society by the Ministry. Their function was to complete a survey of all of the societies.

The nature of the subject matter of such surveys was indicated in the portion of Mr. Charko's testimony reproduced above. It was also discussed by others who testified. Primarily the surveys were designed to gather statistical information and to ascertain compliance with the Regulations made under the Act. The "readers" were just that. They read files, but they were not trained or qualified to assess the quality of the services provided by the Society.

In any event the surveys by the "readers" ceased in 1974 and 1975. The "readers" did not visit the Society during Kim's lifetime.

Various witnesses testified that the "readers" might have detected some problem or error in the management of Kim's case if the visits by the "readers" to the Society had been continued to 1975 and 1976. But even that possibility was dependent on many factors. The subject matter of the current survey would have to be such as would require the "readers" to see files of cases of categories including that into which Kim's case fell. Then, if the files of all cases in those categories were not to be read, Kim's would have to be one selected at random. The untrained and unqualified "reader" looking at her file would have to recognize a problem or error in the management of her case and would have to regard it as a problem or error serious enough to merit mention of it by the "reader" to the child welfare consultant in the Ministry.

It seems to me that the possibility of a positive conjunction of all of those factors would be remote. No one testified that any "reader" had ever reported upon any matter beyond the scope of the specific survey undertaken by the "readers" in the given year.

I entirely discount the possibility that continuation of the system of visits by the "readers" would have been of assistance to Kim.

The suggestion that the visits by the "readers" tended to cause workers to get files in order before such visits, while perhaps valid, does not alter my view.

Nor does the suggestion that, apart from seeing Kim's file, the "readers" might have heard of Kim's case from a worker in the Society. It was suggested that that might occur casually or even intentionally on the part of the Society's worker. Until September, 1975 few in the Society were aware of Kim's case and none of them was interested enough to ensure that it was properly opened, recorded and managed. It is not likely any of them would have felt it merited comment to the "readers."

After September, 1975 the Ministry was aware of Kim's case. The Society, as required by the Ministry, informed the Ministry of it by way of a report dated September 8, 1975 and signed by Mr. Lovatt. That report did not cause the Ministry to become directly involved in Kim's case or to take any action with respect to it during Kim's lifetime, apart from a form "communication" seeking information as to the status of the case in April, 1976.

The availability of Mr. Charko and Mr. Mainville by telephone to answer any question raised by Mr. Lovatt contributed in no way to the Ministry's supervision and inspection of the Society. They would hear of only those matters that Mr. Lovatt wished to discuss. They would not hear of any matter he chose not to discuss or of which, for any reason, he was unaware.

There was no testimony to indicate that anyone from the Branch visited the Society in 1976. Thus, in the two years during which Kim lived, 1975



and 1976, there was no such visit. The Branch relied entirely upon whatever was reported to it by the Society.

In my opinion, in 1975 and 1976 during Kim's life, the Ministry, the Branch and the Director appointed for the purposes of the Act did not fulfill the statutory duty to supervise the Society and to inspect its operation and records.

From 1969 and 1970 the Branch did not have sufficiently trained experienced and qualified personnel to conduct any meaningful supervision and inspection of the societies. The visits by the "readers" until 1974 may be described as one facet of inspection, but it was a severely limited inspection, directed only to specific areas of the records of the Society and conducted by persons who were not qualified to assess the quality of the services delivered by the Society. Even that limited inspection was not performed during Kim's life.

In many ways I see an analogy between Mrs. Lo of the Society and the "readers" of the Ministry. Each may have had some training or education in some somewhat related field, although Mr. Macdonald said the "readers" were not trained in social work. Each may have had the potential to become a qualified social worker. Each might have observed things without realizing the significance, meaning or importance of what was observed.

The analogy ends there because even the Ministry did not expect the "readers" to realize the full significance of what they observed. Even the witnesses from the Ministry acknowledged that if, by chance, the "readers" had seen a file such as Kim's, it would not necessarily follow that they would recognize any problem or concern with it and report upon it. As Mr. Macdonald put it:

"[the] standard reports [of the "readers"] were highly structured - they don't highlight cases specifically in those terms, they would have presumably raised with a field consultant responsible for the society the case if they were sensitive to the fact that it was a significant case."



Apart from whatever forms or reports were forwarded by the Society to the Branch there was no inspection of the operation and records of the Society.

In saying that I am being generous to the Branch because the testimony indicates that not even reports made by the Society to the Branch in 1975 and 1976 were inspected in any real sense.

One such report related specifically to Kim. It was prepared upon a form supplied by the Branch entitled "Report on persons allegedly causing physical ill treatment of a child." It bears the date of September 8, 1975 and Mr. Lovatt's signature.

That report sets out the incident of August 30, 1975. It refers to there having been a "Previous similar complaint June 1975." It shows that the Society had been involved with Kim or her family before. It states that Kim was

"admitted for the third time with fracture and bruises, August 31st 1975."

That report was made to the Branch in purported compliance with its requirements in connection with its so-called Child Abuse Registry or Central Registry of such reports or cases of abuse of children.

That Central Registry had been established by the Branch in about 1966. Mr. Macdonald testified as to its establishment and operation. The following is an extract from his testimony in that regard:

"MR. McRAE: Maybe we could find the exhibits. Probably in the main file. The two reports that you referred to are Exhibits 112 so that we have all the reports that you referred to - you can keep your originals.

A. Now, the reason I wanted to ensure that all of those reports were within the same kind of exhibit was because they are reports related directly to what is known as the Child Abuse Registry. It is not really a Registry but rather it is an Index

administered by the Branch, designed in the mid-60's or in 1966 initially as an instrument to provide a central index of alleged physical abusers, and the purpose of this index was to provide a mechanism by which people who moved from one jurisdiction to another and who repeated physical abuse and were detected by children's aid societies in two different jurisdictions could be identified and the children's aid society in the district to which they moved would be alerted to the fact that there was a previous allegation of child abuse.

Q. So it's a central registry, if there was a child abuse situation in Sarnia the Local Director should refer to your central registry to find out if these people had been involved in child abuse before?

A. Yes. That report - the first report I believe was September 8th, 1975, would have gone to this central index had the alleged abusers been the subject of a previous report in another jurisdiction then the society would have been alerted automatically and would have known that there was some previous history of abuse. I think this was established as an administrative tool purely for that purpose; there was in the 60's an assumption that child abusers typically moved from jurisdiction to jurisdiction in order to avoid being detected and this index was established to attempt to reduce that at least happening in Ontario. In the end result statistically it doesn't show to be a legitimate assumption as a matter of fact.

Q. They don't move that frequently?

A. They don't move that frequently, no. Now, these reports go automatically to the central registry, they are cross-checked against any previous report and the society is notified and follow-up reports are then requested in order to maintain a complete file.

I think - we've got to look at it in the context of the Child Welfare Act which does not at the moment provide for a central registry or central index of child abuse. Section 41 of the Act requires every person having information in relation to a person, etc., etc., to report that information to a children's aid society or a Crown attorney. There's no mandatory provision there for the children's aid society or the Crown attorney, or both, to report to the Ministry. There is no definition of child abuse within any kind of narrow context which would give a reference to that and help the societies determine what should and should not be reported.

Q. And also there's no penalty provided for not reporting?

A. There's absolutely no penalty for not reporting.

Q. It's that kind of a section without much teeth.

A. So, the - it is, this section of the Act. Now in a moment I'll get into what we're doing about that but I want to pursue a little bit, the history of this index.

Q. Alright, because I think it's important that we know what the index means.

A. Using our own memorandum file and correspondence file the first initiative of the Branch - this Section 41, by the way was just introduced into the '65 Act, prior to that I think there was nothing in reference to child abuse. In 1966 the Branch at that time provided reporting kinds of forms that could be used to document reports for the Crown attorney or the children's aid societies and it requested that a copy of the forms be sent to the Branch so that an index may be kept of these individuals, simply an index.

In 1967 there was another memorandum related to Section 41 of the Act and that had nothing to do or very little to do with the index itself but it requested the children's aid societies to work in cooperation with the local community services including hospitals, the police, the Crown attorney and so on, and there was a reminder in that memorandum that copies of the alleged physical abuse form should be sent on to the Ministry.

After that, the registry was left almost in limbo, the societies reported as they determined what was a legitimate case to report because there were no specific defined uses of the index other than tracking down people who moved and a small number of reports would be reported annually to the registry.

In 1972, I believe, the Ministry commissioned a research report on what's happening in child abuse in Ontario from a Dr. Cyril Greenland, and among his recommendations was the strengthened and redesigned - or at least recommended that the Ministry give some consideration to strengthening and redesigning the registry. The Ministry then at that point set up a Ministry committee on child abuse and began to look at the whole area of child abuse, not only the registry but all aspects of child abuse and to look to what the Province has to do to deal with the generalized problem of child abuse. As a part of that Ministry activity a subcommittee worked on the registry along with a number of other issues and we sent -

Q. Were you on that subcommittee?

A. No, I wasn't on the subcommittee, I was on the Ministry committee itself. We sent to the societies in July of 1975 a questionnaire on child abuse, but in that we also included a general understanding at that time of what the registry was in a document entitled "the purpose of a child



abuse central registry" and these were speculative in many cases.

Q. This is in 1975?

A. This is in 1975, the 8th of July.

Q. As a result of Professor Greenland's report of 1972?

A. It was an indirect outcome of Professor Greenland's report which led to the formation of the Child Abuse Committee which undertook this as a part of their working responsibility, and at that time the understanding of what the use of a registry was one of ensuring previous allegations of abuse in another jurisdiction are brought to the attention of the reporting society, that was the one original intent.

Q. Right.

A. Also considered at that time was how the information from a child abuse index or registry might be used in general terms, and there were four areas that were discussed in that speculative paper; program development, research, staff training, public education. There was never in our understanding of central registry a monitoring role for individual management of individual cases. The registry as it existed was also operated again as an administrative tool within the context of growing public concern about confidentiality, growing public concern about people's names going into an information bank without substantiated charges because it's an allegation, it's alleged physical abuse.

Q. Right.

A. And we were concerned that this is not the kind of information that becomes a case management tool, that there had to be other ways to tackle the problem. There is considerable dispute all over the world as

to the value of a central registry, if it's formally defined, but we have now and recently taken the position and included in Bill 114 a mandated legislated central registry which will require a large number of people, including professionals, to report under a penalty and sets out protective procedures for people whose names go on to a registry. They have to be notified their name is on a registry, they have the rights to appeal that - the insertion of their name on a registry and the registry then and will become a very useful tool for the case management, for the monitoring of individual cases.

Q. This is in the bill which was -

A. This is in Bill 114. In addition to those guidelines both philosophical standard and administrative guidelines are being created in the context of this particular piece of the legislation to ensure a viable useful registry.

At the time these reports were submitted they were submitted to an index with a very single purpose managed by clerical staff whose responsibility was to link up previous reports and to collect some follow-up reports for the purposes of the registry so that the registry could report on the service."

Even in relation to the Central Registry there was more evidence of the presence of the phenomenon described by Petronius.

Dr. Cyril Greenland and others, funded by the Ministry, made a report to the Ministry in July, 1972 after a two year study of child abuse in Ontario. That report was published by the Ministry in November, 1973 under the title "Research Report 3 Child Abuse in Ontario." For ease of reference I shall call it the "Greenland Report."

One chapter of the Greenland Report is entitled "Legislation And The Central Register." That chapter is reproduced as Schedule 2-J to this Report.

As early as 1972 the Ministry was advised of the interpretation and enforcement of the legislation requiring persons to report cases of abuse of children. At the same time it was advised of problems with the maintenance and operation of the Central Registry.

Despite the Greenland Report and despite all of the other study and activity indicated by the testimony of witnesses who were on the staff of the Ministry, no changes in the legislation relative to the Central Register were effected until the introduction of Bill 114, and its subsequent enactment in 1978 two years after Kim's death.

The Greenland Report contains the following paragraph:

"In conclusion, the following points must be made about the Central Register:

1. Not all cases of child abuse are being reported by the responsible agencies.
2. When cases are reported, the data are frequently incomplete.
3. The fact that the staff of the C.A.S. makes only sporadic use of the Register suggests that the staff places little confidence in its value.
4. If the register is to serve a useful function, guidelines defining child abuse will have to be issued to all reporting agencies.
5. In the future the staff of the Child Welfare Branch must take a more zealous approach to matters of documentation to improve the quality of the Register.
6. Child abuse is coming to be regarded as a gross symptom of family distress, rather than a serious result of an individual's pathological condition, so the Register itself should be re-organized to reflect this. In the future, emphasis should be placed on

information relating to family function and dysfunction instead of on the isolated abusive episode."

To my mind the testimony upon the Inquiry provided a basis for much more criticism of the Central Registry as it existed and functioned during Kim's life in 1975 and 1976.

I have already written that the Society sent to the Ministry a report of Kim's case dated September 8, 1975.

That report clearly showed that a police investigation was continuing and that later action by the Society would, in part, depend upon the results of that investigation.

In a box on the form, immediately adjacent to the box containing the date of the report and Mr. Lovatt's signature there is a printed request that the Society "notify the Branch of any change in the status of this case, especially charges."

The manner in which the Branch then dealt with that report is a shocking example of inactivity which, nonetheless, gave the impression that the Society's report was receiving attention by qualified personnel within the Ministry. That demonstrated the accuracy of Mr. Macdonald's testimony set forth above that:

"After that [1967], the Registry was left almost in limbo, the societies reported as they determined what was a legitimate case to report..."

In June, 1975 the Society had not made any report to the Central Registry in respect of the report of abuse to Kim. There was no testimony that anyone at the Society had even considered the need to make such a report. On all of the evidence as to the view of the Society's personnel involved with the case in June, 1975, it would appear that the absence of a report to the Central Registry was merely a part of the entire absence of appropriate activity by the Society in respect of the case.



The report made in September, 1975 mentioned the June, 1975 incident and two hospital admissions prior to August 30, 1975.

The persons in the Ministry responsible for the maintenance of the Central Registry had the rather grandiose title of "Review Unit." One of Mr. Charko's answers as transcribed upon the Inquiry describes some of the function of that Review Unit as follows:

"A. The Branch received, [the Society's response to the Branch's communication dated April 14, 1976] I don't think I received directly because the reports come to the, we change our policy and our procedure. Usually all child abuse reports have been coming directly to, we have a special unit that deals with documentation. It's called review unit. The review unit all for example, adoption documents go to that unit, correspondence from other countries, correspondence between the different provinces and so on and that unit also receives all child abuse reports. If there is some unusual thing, sort of requests and so on in any of these reports, then they would bring to the attention of field supervisor. Otherwise it's filed, it's compiled information is recorded on [McBee] (tape inaudible) system which is a card and acknowledged."

If I correctly understood some of Mr. Charko's further testimony, the Ministry, upon receipt of the report from the Society, opened a file in the name of Kim and the report from the Society was placed in it. I gather a copy of the report would be placed in the file maintained by the Ministry for correspondence with the Society.

In 1975 the Ministry's Child Welfare Supervisor or Field Consultant assigned to have responsibility for the Society would have been apprised of the report from the Society only in unusual circumstances. An example of such unusual circumstances would have been a specific request by the Society for information or advice. In one of his responses Mr. Charko said the Ministry's receipt of

such a report would not, by itself, lead to any special attention to the case by the Ministry

"because in these situations as I mentioned, it's sort of, it's up to the Society to take action or ask us for specific information or action."

The title of "Review Unit" is a misnomer. The members of that unit are classified as clerks in the Government service. They were not trained or experienced social workers. Mr. Charko's testimony was to the effect that the Review Unit merely read reports such as those submitted by the Society under date of September 8, 1975 and in April, 1976. Then, unless there was something which they recognized as being "unusual", they merely transferred some basic information from the report to an index card, filed the report and placed the card in the index.

That is not a review in any ordinary sense. It is merely a reception and recording of incoming mail.

If anything more was expected of the Review Unit I am struck by the similarity of their position to that of Mrs. Lo at the Society. In testimony Mrs. Lo was described as being in over her head. So were the Review Unit if they were expected to recognize anything unusual in any report unless the author of the report clearly pointed out the unusual feature, as by making a specific request for assistance or information. The Review Unit had no qualification to fulfill any such expectation.

There was no testimony to indicate that the Review Unit found anything unusual about the Society's report of September 8, 1975 or that any qualified social worker among the Ministry's staff was aware that the Society had filed that report.

Mr. Charko, who was then Supervisor of Field Services of the Branch, a position he had held from August, 1971, denied that he had been informed of that report. As Supervisor of Field Services he was responsible for supervision of Mr. Mainville who was the Ministry's Field Consultant responsible for the Society from 1970 until January, 1976. Mr. Mainville also denied that he had been made aware of

Kim's case and the Society's report thereon to the Ministry.

In September, 1975 the only result that flowed from the Society's report was that a file on Kim was opened and an index card was prepared. No one with training, experience and skill in child welfare matters, especially child abuse, was aware of the report or of the case.

In saying that I am aware that the head of the Review Unit had been employed, perhaps 20 years earlier, by a children's aid society. The nature of that employment was not disclosed. The nature of her qualifications as a social worker, if any, were not disclosed. She was classified as a clerk in the Government Service. I presume she was trained and experienced in clerical, not social work duties.

Mr. Macdonald in addressing the question of the function of the Central Registry in 1975 and 1976 said:

"At the time these reports were submitted they were submitted to an index with a very single purpose managed by clerical staff whose responsibility was to link up previous reports and to collect some follow-up reports for the purposes of the registry so that the registry could report on the service."

Questions to and responses by him continued as follows:

"Q. Well, I have some difficulty in distinguishing between the local Society preparing an allegation of a battered child syndrome report for the Ministry and the Ministry feeling that because of confidentiality they can't do anything about it. Do you understand that problem that I have in resolving the difference.

A. I don't think that's the point I am trying to make. It's not a matter of not being able to do anything about it, it's a matter that the system was not designed to do anything about it because the system was

designed to operate an index only and the procedures just weren't there to do anything about it.

Q. Well, I think clearly that's your main point. Certainly in '75 there was no procedure there to monitor these cases because they were reported?

A. That's correct.

Q. Through to the Ministry --

A. We did not have professional staff reading between the lines to determine if intervention was required."

"HIS HONOUR: ...I imagine I probably have a question or so, Mr. Macdonald, although some of my notes have probably been covered by various periods of cross-examination.

With reference to the abuse registry as it existed in '75, '76.

A. Yes.

HIS HONOUR: I gather from your testimony, and perhaps from the testimony of others as well, that the Ministry has recognized that that was not a very satisfactory operation, or at least it didn't produce particular results as it was used, but I had the impression that while there was a lot of discussion about this being used as a tracking mechanism that really it was not a tracking mechanism from the point of view of finding out where potential abusers are, but simply to let the Ministry know after the fact of abuse, that it was not a preventive procedure, it was just a recording of a past event. Is that correct?

A. I think that's quite accurate, Your Honour, I think it was never designed to be a monitoring mechanism, it was designed and I'm not sure I would call it a tracking mechanism but its primary function was to ensure that an alleged abuser who may have



moved from one jurisdiction to another and had then become a second alleged abuser the

second jurisdiction would be able to have preceding information and would be able to rapidly locate any available information that might have been available...

HIS HONOUR: But...

A. ...but that was the design.

HIS HONOUR: Would the Ministry or that Branch of the Ministry responsible for the maintenance of this registry if a second allegation of abuse came in would it then as a matter of record notify the second reporting agency that there were prior...

A. Oh yes, that was the one designated action that took place, and I think I mentioned yesterday that at the time it was established in the mid-60's there was an assumption that abusers moved from jurisdiction to jurisdiction.

HIS HONOUR: I recall that.

A. Really they don't, they may go from hospital to hospital or doctor to doctor but I believe it was the number of situations which required a feedback of the sort that it was designed for was 2/10th of 1% of the alleged abusers appeared in other jurisdictions, it was not an (inaudible)."

Dr. Herbert Sohn said virtually the same. The questions put to him and his responses were:

"Q. Well perhaps we are just not on the same wavelength. What I am concerned about here is the fact that in these reports you or your working cohorts found dangerous situations which you brought to the attention of the Director of Child welfare. Am I correct?

A. Yes.

Q. The point is that up to the time [after June 1, 1976] you and your cohorts were delegated to read these files there was no systematic review of them by professionally competent people within the Ministry within recent times who might discover a certain dangerous situation which the Director of the Child Welfare Branch could bring to the attention of the local director and back-check of it.?

A. There was no professionally trained person responsible for the review of reports that came to the Ministry."

I prefer that testimony to Mr. Charko's which was transcribed in the following form:

"Q. Now, you made mention this morning sir, that when this form [report of alleged abuse of a child] was received it was read by someone, I hope?

A. In the Branch, in the review unit.

Q. Well, are those the clerical staff that are there?

A. They are in a position, I believe they are classified as cleric 4, cleric 5, reviewers. They're quite familiar with the type of cases and social work and so on."

Mr. Charko was not helpful in that response.

The head of the Review Unit did send to the Society a form entitled "Communication" dated April 14, 1976, about seven months after the Society's report dated September 8, 1975. That form simply gave the names of Kim and her parents as the Branch's file number. The form contained several boxes, each indicating the particular "communication." The only box checked was the one reading "we would appreciate a report on the current status of the case." It was not signed by anyone at the Ministry, but had a post script mentioning the Society's report of September 8, 1975.

The form also contains a space for reply. That reply was completed in typewriting and it was signed by Mr. Lovatt. No date was shown, but there is a handwritten note thereafter as follows:

"Entered in child abuse registry 7/5/76."

I take the latter to mean May 7, 1976, but that was not made clear.

From early September 1975 until mid April, 1976 the Society's report to the Central Registry received no attention from the Ministry and provoked no action by the Ministry. In mid-April a simple request for a report on the current status of the case was mailed to the Society. What caused that was not stated in testimony. It would not be beyond the realm of possibility that the Review Unit felt that the reference to the original report to the application for wardship and the unfinished police investigation and pending charges required some further report and that the passage of about seven months was sufficient to enable the Society to make that further report.

The existence of the Central Registry with all of its trappings of reports and Review Unit was meaningless and worthless as it related to Kim.

From the testimony upon the Inquiry and from reading the Greenland Report and the subsequent Garber Report of 1978 it would seem that the Central Registry, as it existed at least to 1978, was an ineffective device.

The full significance of that criticism of the operation of the Central Registry as it affected Kim is realized by an examination of the evidence of various experienced and qualified social workers.

So that readers of this Report might appreciate the basis for this area of testimony, the Society's report to the Central Registry dated September 8, 1975, the subsequent "communication" from the Branch dated April 14, 1976, with the Society's reply thereto endorsed thereon, and the Society's second report to the Central Registry dated August 11, 1976 are set forth in Schedule 2-S, 2-T and 2-U to this Report.

One such witness was Mr. Charko. He testified that he had not been aware of either of the documents prepared during Kim's lifetime. He had seen them before testifying. He was asked a number of questions and replied as follows:

"Q. Did you find something unusual in this?  
[the "Communication" of April 1976]

A. After I read everything about the Popen case, what unusual I found on this form that the, it appears that the Society had suspicion that Mrs. Popen was abusing the child all the way through and not Mr. Popen.

Q. Right. If you'd seen this, let's just say this had crossed your desk back in April of '76 and you didn't know anything about the Popen case, would you be concerned about this memorandum?

A. If that particular situation, or that type of situation was brought to my attention and if I knew that other person was tried I would have discussed this with the Society...

Q. Yes, all I want to know is...

A. ...this particular case I haven't done because it was not brought to my attention."

"Q. ...All right, but in any event if that had come across your desk in April of '76, you might have reviewed the whole Popen matter?

A. That's possible.

Q. There is not much doubt about that, is there? You would have reviewed it, wouldn't you?

A. I would have."

Another such witness was Mr. Macdonald. He was explaining that, in 1975 and 1976, the Ministry



did not consider the Central Registry to be a means of monitoring cases of child abuse. He was asked the following question and made the following reply:

"Q. Well, all I want to know is this, Mr. Macdonald, if that Exhibit 115 ["communication" dated April 14, 1976 and the Society's reply] had been sent to you personally as the Director of Child Welfare, it just somehow landed on your desk, was that the type of thing that the Ministry would have sent one of their field consultants out to look into?

A. No, but we may have had - not necessarily sent somebody out but we may have had - if a field consultant had been given this report then I would suspect the field consultant would contact the Society to determine what they were doing and what additional details were necessary."

Dr. Sohn was another witness whose testimony was to similar effect although some of it did not pertain specifically to the documents relating to Kim. As the Co-ordinator of the Ministry's Child Abuse Program he had undertaken, after his appointment to that position on June 1, 1976, a review of the Central Registry and its utilization. He said:

"I might add that there has been since the period that we have established the Child Abuse Program, [after June 1, 1976] there has been a more intense use made of the register in that in our review we couldn't help but come across information that we felt we had to draw particularly to the attention of the Director of the Child Welfare Branch and the Director has utilized our staff extensively in assisting agencies, societies and his own staff in working with cases that relate to that register.

Q. Well, without putting too fine a point on it were you more or less delegated to review this register to make sure there were no more latent or incipient Popen situations dotted around the province?

A. My mandate was not stated that way.

Q. No, I know but.....

A. It was simply to review and to make recommendations where appropriate for an improvement in the register.

Q. But you have said that by reason of information which you came across in the register you brought the theme certainly to the attention of the Director of the Child Welfare Branch. I would assume from that, rightly or wrongly, that you pointed out to him some danger situations, or dangerous situations which you recognized from the reports?

A. That's true. I should quickly add, because I don't want to take undue credit, that some time before I did that on specific issues a report had been prepared for the Ministry by Professor Cyril Greenland that pointed out some of the problems related to the register, and a report that was published by the Ministry and circulated widely in 1973 entitled "Child Abuse in Ontario" - not a very novel title but it did the job, and that report was issued to all children's aid societies and other interested agencies across the province. One of the strong findings, one of the strong concerns raised by Professor Cyril Greenland was that there was not sufficient reporting, that there was far from sufficient co-ordination and co-operation between agencies and professions across the province.

Q. Well was his report more oriented towards statistics as opposed to the fact that the Ministry would not be able to appreciate individual serious child abuse cases from the type of reporting that was being done?

A. You are correct, and of course his report had to deal with cases, but you are correct that his report did not reveal

names or particular situations or names involved with particular cases.

Q. Well perhaps we are just not on the same wavelength. What I am concerned about here is the fact that in these reports you or your working cohorts found dangerous situations which you brought to the attention of the Director of Child Welfare. Am I correct?

A. Yes."

Questions relating specifically to Kim's case were put to and answered by Dr. Sohn as follows:

"Q. I have shown you at the recess exhibit #112 and a portion of exhibit #74, which are reports from the Lambton County Children's Aid Society to the Ministry of Community and Social Services on the ministerial form. These reports are dated August 30th, 1975, and April 14th, 1976. Have you had an opportunity of reviewing these reports?

A. Yes I have.

Q. Had you been, in the position in the Ministry to be reading such reports and attempting to advise the local children's aid, as indeed the Field Consultants now attempt to do, as on the child abuse question here, what if any recommendations would you make - now firstly, would you be in the position where you have some concern reading these reports as to the safety of the child and her being returned to the home.

A. I would have a great deal of concern about the safety of the child.

Q. All right, would you please outline why, having regard to these reports?

A. The first report indicates that this is the third incident in which this child has

been admitted to the hospital with fractures and bruises. I would be very much concerned about how many incidents prior to this that were not known to this particular hospital. I would want to know a lot more about what can be found out concerning that family and its relationship, particularly to that child. I cannot find in this report any indication that that has been attempted.

Clearly there is a statement here that subsequent action will be dependent on police investigation and parental co-operation. I would think that in addition to the police investigation it is extremely important for a social investigation to have been conducted and a psychiatric investigation with both the mother and father. Unfortunately a psychiatric investigation was done only with the father. Clearly we have incidents, have experience that one parent will try to cover for another parent and clearly reflected in one of the reports here the police expressed that concern that it is really the mother they should be concerned about rather than the father.

Q. Well then based upon those reports you would have wanted to have been satisfied in a good many more areas than apparently the local children's aid gave its attention to before this child would be returned to the home?

A. In terms of what is reflected in these two reports, yes.

Q. And you and I have agreed, have we not, doctor, that dealing with this particular case of Kim Anne Popen how valuable it would have been if they had been monitoring the reports that they were receiving from the Children's Aid Society?

A. Yes, I agree.

Q. Because a professional like yourself, a professional like other professionals we



have seen has said we would have been really concerned if we saw that report in April, 1976 coming before us we would have investigated it.

A. I would agree with you. I would be concerned, though, that a professional in the local scene would not be concerned about that. You will realize that if you are talking about people locally, training, professional people locally, having to rely upon experts in some central community to ensure that they have a professionally competent practice, then we are in trouble. I think the monitoring can help and should be there but it should be there not as a policing per se, but be there as a support.

Q. Well it is valuable in this function...

A. Yes.

Q. If the professional at the local level is blowing it, there is another safety check. Wouldn't you agree with that?

A. I think the safety check would be useful. I would hope that the professional locally would not fall back upon that. That the professional locally would so develop his or her practice as to be self sufficient in the protection of children.

Q. Doctor, throughout these hearings it appears to me that sometimes it becomes difficult for people in Toronto to understand people on the local level may not be doing their job. Now if one looks at those reports with a view - and maybe that professional at the local level has lost his or her expertise and made a wrong decision - it becomes a valuable piece of information doesn't it?

A. Certainly ..."

I am satisfied that the initial report by the Society to the Central Registry dated September 8, 1975 together with the response to the Ministry's

"communication" dated April 14, 1976, gave to the Ministry information which, if the documents had been read by a qualified social worker, should have raised concern within the Ministry. That concern should have been reflected in action by the Ministry directed specifically to Kim's case.

I am satisfied that during Kim's lifetime the Central Registry was not in any sense used by the Branch as a means of supervision or inspection of the children's aid societies.

Almost two years after Kim's death the Ministry did begin to use the Central Registry to that end. That was accomplished very simply. In May, 1978 the procedure within the Branch was changed, merely by its own administrative action, to require that every report to the Central Registry be copied and one copy be given to the Branch's Field Consultant responsible for the children's aid society operating in the geographical area where the child named in the report lives. It is the duty of the Field Consultant to examine the report and take all necessary and appropriate action, including requests for further reports or information. The Field Consultant would possess appropriate knowledge and skill to give to any such report the immediate and continued attention it deserved, including direct intervention by the Field Consultant if necessary.

That change of procedure came about almost six years after the Greenland Report of July 1972 had questioned the value of the Central Registry "for statistical purposes alone." The Greenland Report made several points about the Central Registry which have been reproduced earlier in this report. The fifth of those points is particularly significant in relation to my present remarks.

That change of procedure came about almost two years after Dr. Sohn became Co-ordinator of the Ministry's Child Abuse Program. He had reviewed the Central Registry and found in it information which he felt had to be drawn to the attention of the Director of Child Welfare. From reports he found in the Central Registry he recognized "dangerous" situations and he advised the Director of Child Welfare. It would seem that until Dr. Sohn drew these dangerous situations to the attention of the Director of Child

Welfare that official was not aware of the information reposing in the files of the Branch. No other qualified social worker in the Branch was shown to be aware of that information until Dr. Sohn advised the Director of Child Welfare.

There was no testimony to indicate that the Director of Child Welfare or Dr. Sohn or any other qualified social worker in the Branch was aware of Kim's case during her lifetime. They were not then even aware of the documents about her in the Central Registry.

The Ministry, the Branch and the Director all are responsible and merit severe criticism with reference to the operation of the Central Registry. The Greenland Report of 1972 raised some concern about it. It was not until some time after June 1, 1976 that any change in that operation came about. The exact date of the change was not stated in testimony, but it occurred after Dr. Sohn commenced his duties as Co-ordinator of the Ministry's Child Abuse Program. One of his duties in that position was to review the Central Registry.

Dr. Sohn testified that a committee from the children's aid societies and the Ministry was formed to conduct the review. He said the recommendations of that committee were reflected in Bill 114 which was introduced in the Legislative Assembly in 1978. That was about two years after Kim's death.

Even without any amendment of legislation or regulations the Ministry was able to change the operation of the Central Register to provide that all reports submitted to it would be submitted to qualified personnel. There was no testimony to indicate that that change occurred during Kim's lifetime. I am satisfied that if the Ministry had been so minded that change could have been effected during Kim's lifetime.

By the time Dr. Sohn had begun his review of the Central Registry it had been in existence for about ten years. Mr. Macdonald's description of it as being in limbo was most apt. One of the definitions of the word "limbo" is "condition of neglect or oblivion." The Registry was certainly neglected, forgotten and in oblivion for about ten years.



The Central Registry had an imposing name. The clerks who received and recorded the reports had an even more imposing title. An annual report of its "activities" was prepared and circulated. If Kim's case were numbered among its activities I would suggest that the title is misleading. That report indicated the statistical material of the Central Registry, such as the total number of complaints, the number of complaints from each children's aid society and the ages of children.

Dr. Sohn testified that the material in the Central Registry was useful in a variety of ways. He said some children's aid societies made use of it by inquiring, whenever there was any suspicion of an incident of abuse, to learn if the child or family had been involved in any earlier incident. He said he had wished more of the societies made that use of the Central Registry.

There was no testimony to indicate that the Ministry encouraged the societies to make that use of the Central Registry. It was a situation of the sort that recurred so often during the testimony of witnesses employed by the Ministry. The societies were left to make the decision as to whether an incident or case should be reported to the Central Registry or whether any advice or assistance with it should be sought from the Ministry.

Even though the circumstances are tragic I am drawn to recognize the Ministry's position as the exact opposite to the familiar line used to dispose of an unsuccessful applicant "Don't call us - we'll call you." Here the Ministry was saying, in effect, "Call us - because we'll not call you."

The existence and operation of the Central Registry did not constitute any supervision or inspection of the societies by the Director, the Branch and the Ministry.

The Ministry and its personnel were content to let the Central Registry remain in limbo for over ten years. It had been devised originally as a means of "tracking" persons who might be abusers of children. At some time it was demonstrated that it was not effective for that purpose because such persons did not move about, from community to community or



from hospital to hospital, as much as had once been believed. When that was demonstrated was not clear from the testimony, but, in any event, no change in the operation of the Central Registry occurred until some time after June 1, 1976.

On the basis of Mr. Macdonald's testimony I am satisfied that it was not until 1978 that the procedure of the Central Registry was changed by his instruction, as Director of Child Welfare, that each report to the Central Registry should be examined by the Ministry's Field Consultant responsible for the society to whose area the report related.

Testifying in September, 1978, after describing the Central Registry as a source of information for any inquiring society, he went on to say:

"A. Under the new Bill [114] it will be a significant case monitoring process as well. I should add that we have in this year begun to screen the registry reports; failing that the concern over child abuse is such that we will use every possible method of gaining a handle on the situation so I instructed at some time earlier that all reports should be screened by the field consultant responsible for the society. Now, I --

Q. Is that at least partly because of the highly publicized cases; there have been more than one, and this Popen case being one?

A. I would think so. Much of our activity is working on the problem and we're looking for any possible way of improving our system ability to control the problem and to reduce the incident....."

Even then Mr. Macdonald was stressing the "activity" of the Ministry while conceding that it received some impetus because of "highly publicized cases."

Kim's case was one of those. But the publicity came in December, 1977, about sixteen months after her death.

It is sad that it took "highly publicized cases" to give some impetus to the Ministry. In my view the impetus to the Ministry should come at least as much from within the Ministry as from outside it and it should not require the occurrence of "highly publicized cases."

There was no testimony to substantiate or suggest any reason why the directive to "screen" reports to the Central Registry could not or should not have been issued during or even before Kim's lifetime.

When that change came about, at least in part as a result of the Greenland Report in 1972 and Dr. Sohn's review after June 1, 1976, the Central Registry was recognized as being useful as one instrument to enable the Ministry to monitor the management of incidents of possible abuse.

Subject still to the serious proviso that, despite the contents of the Greenland Report, no clear direction was given by the Ministry as to what incidents were to be reported, the Central Registry was then available as a means of supervision and inspection of the societies.

Because of that proviso it was a flawed instrument for that purpose. Only cases or incidents reported by a society would be monitored and, to that extent, supervised. Cases or incidents not reported by a society would not be supervised or inspected unless, as a result of something occurring in relation to a reported incident, the Ministry examined other files at the society or, as a result of the case itself becoming "highly publicized," the Ministry belatedly became interested in it.

Kim's was an example of the latter type of case.

The likelihood of the Ministry becoming interested in a case not reported to it was rather remote. There was no testimony as to what might stir the Ministry to some action in such a case.

It would seem that it would have to be something shocking. Even in Kim's case, which was reported in September, 1975, it did not occur until March, 1977. At that time the Ministry was stirred ever so slightly about seven months after her death in August, 1976.

Until March, 1977 the Society had forwarded three documents to the Central Registry. They were the initial report dated September 8, 1975 and the response to the Ministry's "communication" dated April 14, 1976 and another report, upon the same form as the initial report, but dated September 27, 1976, signed by Mr. Lovatt and reporting Kim's death on August 11, 1976.

That report dated September 27, 1976 in appropriate spaces on the form mentioned:

"Previous history of child abuse. Mr. Popen father pleaded guilty in court on Mar.29/76 (sic)."

"Date Aug. 11/76"

"Child died shortly after arriving at the hospital. Doctors again suspected possible battered child syndrome. The police have conducted a full investigation into the situation."

"Application for wardship for the other child Karie, born July 1976 made August 18/76, adjourned to Sept. 20/76."

"Parents have been charged with manslaughter."

A portion of Mr. Macdonald's examination by counsel to the Inquiry was transcribed as follows:

"Q. So that Exhibit 112 includes a very brief report of her death. Yes, part of Exhibit 112 they reported September 27th, 1976, just indicates that 'the child died, shortly after arriving at the hospital. Doctors again suspected battered child syndrome. Parents have been charged with

manslaughter'. Now, that would have gone into your registry?

A. That was the registry report, yes.

Q. Even that didn't trigger any red lights or flags or anything?

A. Not at that time."

Even the death of Kim, shown by the earlier report and response to have been a ward of the Society when she died, and the laying of the charge of manslaughter against her parents were not enough to arouse any active interest of the Ministry.

I am unable to imagine any combination of information and events which could stir the interest of the Ministry if those reports from the Society could not attract attention from the Ministry. I cannot help but contrast the inactivity of the Ministry with reference to Kim and her case following the Society's reports to the Ministry with the great excited flurry of activity which followed the publication of reports of her case in and after December, 1977.

That flurry of excited activity confirms Mr. Macdonald's testimony, which I regard as a sad commentary upon the operations of the Ministry in relation to Kim. He thought that "highly publicized cases" had led to some changes in procedures in the Ministry.

Until it became a "highly publicized case," Kim's case aroused effectively no interest by the Ministry and when it was highly publicized there was great interest by the Ministry. There was a long-distance telephone call for an immediate oral report to be given to the Minister within hours. There was a request for a written report to confirm or elaborate upon the oral report. And then of course there was the continued interest of the Ministry as the case remained "highly publicized."

On the face of the documents there were discrepancies. The response of April, 1976 said that Kim was made a ward of the Society on February 25, 1976 and "Mr. Popen had pleaded guilty," the tense



chosen suggesting, correctly, that the plea was entered before February 25, 1976. The report of September 27, 1976 said the plea was entered on March 29, 1976.

The report of September 27, 1976 said that the application for wardship of Karie was adjourned to September 20, 1976, a week prior to the report. The recordings in the files of the Society state that on September 20, 1976 Karie was made a ward of the Society for a period of six months.

It was not until March 25, 1977 that the Ministry sent a "memorandum" to Mr. Lovatt. In it the Branch "wondered" whether Mr. Lovatt could provide

"a more detailed report concerning the child's [Kim's] decease."

and asked for advice

"on the present status of Karie...and on the results of the charges laid against the parents..."

The slight stirring of the Ministry brought forth that very mild communication.

Despite two reports that would have led experienced social workers such as the Ministry's Field Consultants to make inquiries of the Society as early as September, 1975 and April, 1976 and a further report, in September, 1976, of the death of the child mentioned in the earlier reports, which should certainly have led qualified and experienced personnel to do something, the Ministry had done nothing.

After that slight stirring, the Ministry returned to its state of apparent lethargic interest in Kim's case. It was not until almost six months later that the Ministry sent a "memorandum" seeking more details of Kim's death, Karie's status and the charges against the parents. The memorandum did not suggest any sense of urgency. It merely expressed the wish for a reply "in due course." In the light of all that occurred later, that is a further illustration of the Ministry's lethargy.

Mr. Lovatt did not reply until May 13, 1977. That delay of about seven weeks, unquestioned by the Ministry, indicates the little importance both Mr. Lovatt and the Ministry placed upon the matter. His signature appears upon the letter. Most of the letter was taken up reciting the many adjournments of the criminal proceedings which were then scheduled to be heard on June 15 and 16, 1977. It mentioned the orders making Karie a ward of the Society for six months from September 20, 1976 and for a further eight months from April 4, 1977.

By the time that memorandum was written the initial period of the Society's wardship of Karie had been completed. The recordings in the Society's file state that on April 4, 1977 the Society was granted wardship of Karie for a period of eight months.

None of what was recorded in the Central Registry caused any stir by the Ministry. It is fair to infer that the memorandum from the Ministry dated March 25, 1977 was written because the Ministry received a letter from H.B. Cotnam, Chief Coroner for Ontario, dated March 17, 1977, addressed to Mr. Macdonald.

Dr. Cotnam wrote of Kim's "tragic death... as a result of 'child abuse.'" His letter concluded with the words "for your information and whatever action you deem necessary."

The Ministry wrote to Dr. Cotnam on March 25, 1977 to acknowledge his letter and to state that the Ministry had written to the Society for "a more detailed report."

It would seem that while Dr. Cotnam's letter caused the Ministry to write a memorandum the Ministry was not pressing the Society for information.

The Ministry had not provided supervision and inspection of the Society during Kim's life. Her death and the Ministry's knowledge of it, of some of the earlier incidents of abuse during her lifetime and of the charge of manslaughter against her parents made no change in that.

Mr. Macdonald, in another area of his testimony, said that the Ministry recognized that each society had a primary responsibility in its own geographic area. He said that the Ministry also recognized its responsibility to oversee the operations of each society. He said the Ministry perceived its role as providing advice, assistance and help to the societies. That would seem to be a correct perception.

I am satisfied that even prior to Kim's birth the Ministry was not fulfilling that role. It did not have a sufficient number of staff with qualifications to oversee the operations of the societies and to advise and assist them. That situation continued and was even more acute during Kim's lifetime.

Mr. Silvio Joseph Mainville testified to that effect. From September, 1970 until late January, 1976 he was a Child Welfare Consultant or Supervisor with the Ministry. From 1970 until 1973 he was one of three persons holding such office. In 1974 and 1975 he was one of only two such persons. In that position his superior was the Supervisor of Field Services of the Branch. From 1973 Mr. Charko held that latter office.

Mr. Mainville testified that

"primarily [his] responsibility was to make [himself] available as a programme consultant to [societies] in Ontario."

His choice of words shows that he felt he was required to be available to societies at their request. That is hardly the position of one who is to supervise and inspect and advise.

Mr. Mainville was initially assigned responsibility for about fifteen societies, including the Society. Mr. Mainville was aware that in 1974 and earlier years "readers" employed by the Branch had visited the Society to conduct specific field studies to enable them to prepare statistical reports. The nature of the studies might vary from year to year. In addition the "readers'" studies were intended to ensure that "some" of the requirements of the Act and the Regulations thereunder were



complied with by the Society. Mr. Mainville then met with Mr. Lovatt to review the "readers'" report. The visits of the "readers" to the Society were discontinued in 1974.

Even the method by which that discontinuance was achieved is worthy of comment. It seems to have been primarily a process of attrition. As the "readers" found or were given other employment in or out of the Ministry they were not replaced. There was no regularly planned procedure to achieve the discontinuance. The societies were not advised of any such intention by the Ministry. They were not advised that the surveys were going to be discontinued. The visits of the "readers" simply stopped without comment from the Ministry unless someone inquired as to when the "readers" would be visiting. This was another instance of the Ministry waiting for a society to approach the Ministry. It would seem that if a society did not inquire it was not advised.

Mr. Charko expressed the Ministry's position in 1974 and 1975 as the process of attrition neared its end and the surveys by the "readers" ceased. That occurred in the following exchange of questions to and responses by Mr. Charko:

"Q. All right. Now, in the latter part of 1974 and '75 what plans had the Ontario Government made for the evaluation of local children's aid societies?

A. There were no plans to evaluate. These duties to some degree as I mentioned were sort of given to the children's aid society to say maybe if we discontinue some of these surveys, you could introduce your own and some societies did introduce, some they didn't.

Q. Well, were the plans being made by the government in '74 and '75 to allow the local societies to evaluate themselves?

A. No, we didn't sort of officially send any memorandum to this fact to say that we are charging, we're asking the societies to assume that responsibility or to say that



we are terminating. This was sort of a gradual phase out.

Q. Well, yes, had the government any plans as to how to evaluate local children's aid societies in '74, '75?

A. The government, at that stage I would have to say no. What did happen at that time, the Ministry was planning to decentralize and after the decentralization if decentralization went into effect then we'll decide if the survey or evaluation would be done from the central office from Toronto or from each individual area.

Q. Well, as a matter of fact even today [1978] has the Ministry any plan or any procedure for the evaluation of children's aid societies?

A. Not formal."

One process of contact with the societies, however ineffectual it may have been, was allowed to wither and disappear without plan and without replacement and without notice to the societies. It was all part of some proposed reorganization of the Ministry.

Mr. Mainville testified that in the latter part of 1974 and in 1975, because of financial constraints and the reorganization of the Ministry, the number of Child Welfare Supervisors was reduced from three to two. He did not visit the Society in that period.

The significance of that number of Child Welfare Supervisors, whether it be three or two, is apparent when it is compared with the number who were in such positions until about 1969. That number had begun at eight, but gradually dwindled to two. The number of societies remained constant.

Unless the Ministry was overstaffed prior to 1969, and there was no such suggestion, one can only wonder how two persons could do what had required eight persons in earlier years.

I am satisfied that the two Child Welfare Supervisors could not and did not provide a reasonable and adequate level of supervision, inspection and advice to all of the societies during all of Kim's life. The Society was one society which did not receive an adequate level of such service from the Ministry during Kim's life.

I say that in full awareness that the "readers" did some non-professional visiting and gathering of information until 1974. By the time Kim was born even their services to the Society had been withdrawn.

The result was that in 1975, the first year of Kim's life, there was not even a visit to the Society by the "readers" and there was no visit to the Society by Mr. Mainville, the Ministry's Child Welfare Supervisor responsible for the performance of the Ministry's responsibilities in respect of the Society. Mr. Mainville may have been "available" to the Society, but, in my view, the Ministry in 1975 failed to provide any supervision or inspection of the Society.

I accept as an accurate assessment of the Ministry's capabilities in late 1974 and in 1975 Mr. Mainville's testimony that

"...there were only two Child Welfare Supervisors for the whole Province of Ontario in 1974 and '75 so certainly the Ministry was in no position to adequately monitor children's aid societies nor do I wish to suggest that what existed prior to that was completely adequate in terms of monitoring the work of the children's aid societies..."

He expressed the same view in respect of his own ability to supervise and inspect the societies for which he was responsible. They included the Society. That expression of opinion occurred in the following exchange of questions and answers.

"Q. And it would have just, from your standpoint in the latter part of '74 and '75 been almost impossible for you to have surveyed 15 agencies yourself?

A. It would be impossible, sir.

Q. Were there any instructions given to yourself as a Field Supervisor not to visit agencies?

A. No, sir, there were no such instructions. Because of the shortage of staff necessarily we could not provide the same amount of consultation to the Societies that we were providing earlier but we were simply told to make ourselves available on request in special situations where there were some serious problems where certainly we would be expected to deal with these concerns."

Mr. Mainville testified that he, the Ministry's Child Welfare Supervisor supposedly overseeing the operation of the Society until January, 1976, was unaware of Kim's case in 1975 and 1976. That, together with the testimony of the witnesses employed by the Society as to the gravity of Kim's case and that such a case was a rarity within the Society, demonstrates the utter lack of supervision and inspection of the Society and its files and records by the Ministry in 1975. It was no different in 1976 the second and last year of Kim's life.

Mr. Mainville resigned from the Ministry in January, 1976. He did not visit the Society in 1976. Mr. Charko, still retaining his position as Supervisor of Field Services, assumed direct responsibility for the supervision of the Society after Mr. Mainville's resignation.

Mr. Charko testified that until 1974 the Child Welfare Supervisors in the Ministry

"were more involved directly with the, identifying weaknesses in [societies]."

He too said that from 1974 that involvement was reduced because of the Ministry's re-organization. He said that the desire of the societies for greater autonomy was a factor in that reduction.

There was no testimony to suggest that the Society at any time expressed any desire that the

"readers" not visit or any concern as to encroachment upon its autonomy.

In my view Mr. Charko confirmed Mr. Mainville's testimony as to the insufficient number of personnel within the Ministry to enable it to fulfill its obligations in respect of the Society. He said he had not instructed Mr. Mainville not to visit the Society in 1974 or 1975, but

"there was sort of a limited time because of the number of staff that we [the Branch] had."

That satisfies me that the changes within the Ministry resulted in its not having sufficient personnel to do what it had been doing in early 1974 and prior years. I am not saying that what the Ministry did in those earlier years constituted a satisfactory performance of its statutory obligations. In my view it did not. *A fortiori* what occurred in late 1974 and during all of Kim's life was not a satisfactory fulfillment of the Ministry's statutory duties to supervise and inspect the Society.

Mr. Charko gave some forthright responses when asked to express his personal opinion upon the involvement of the Ministry with the societies.

One such response is contained in the following extract from the transcript of his testimony upon the Inquiry:

"Q. Well, Mr. Charko, do you think therefore, that the Ministry should become more involved at the agency level once again as they were prior to 1974?

A. My feeling yes and as I say I speak out quite strongly and openly in many Societies and I think I say this openly in the government and I've been on both sides in a sense, because I've spent about just as many years in a children's aid system on a different level as a worker, as a night duty worker, as a supervisor, as a local director, as I spent with the government. I have to say that the government has to



provide more supervision, that would be my sort of a feeling.

Q. Well, is it your feeling now or was it your feeling in '74, '75, '76 and '77, that they should be applying more supervision?

A. My personal feeling was that we should be more involved with children's aid.

Q. Then you were during those years?

A. That's right."

Another equally forthright response related to the Society and is recorded in the transcript of his testimony as follows:

"Q. ....I'm asking you whether or not you do agree with Mr. Zwerver's observations that there were some major areas of concern in this Agency?

A. I think the areas of concern there were, yes.

Q. All right.

A. I agree with that part.

Q. All right, fine. Now, is there any way as far as you're concerned that the Ministry ought to have known about the fact that there were these deficiencies in this Agency here in Lambton County?

A. If for example, if I or Sil Mainville who supervised previously or Paul Siemens, we came here more frequently and if I met with the staff more frequently, with the supervisors, probably a lot of these things would have come to the surface.

Q. All right.

A. Or even field workers, when we had field workers at times after they spent one week in children's aid society, in one week they can observe quite a few things, so

beside the survey at times I would get kind of feeling, there is some problem or some area of concern, then we would get into the Society and discuss these areas asking for improvement.

Q. All right. Now, I know you can't be absolute about this, but do you feel that if Mr. Mainville after or someone else besides him, had continued to be able to visit the Agency on a regular basis as they had done in the past that they would have picked up a lot of these things, a lot of these areas of concern.

A. Correct, this would have been picked up."

That was an acknowledgement by a responsible official of the Ministry as to the inadequacy of the Ministry's performance of its duty under section 2 of the Act at least or particularly during the months of Kim's life. That acknowledgement reassures me in my opinion.

I am satisfied that during Kim's life Mr. Mainville and Mr. Charko were available to advise the Society if the Society requested advice. To that limited extent the Ministry performed a part of its obligation to advise the Society. But the provision of advice only when requested is not the full extent of the obligation which the statute places upon the Ministry.

In my view a correct interpretation of Section 2 of the Act requires the Ministry to provide advice when it is needed or appropriate even if the Society has not asked for it.

Mr. Charko's testimony that the desire of societies to have greater autonomy was a factor in the reduction of the involvement of the Child Welfare Supervisors with the societies seems to be an extension of the approach by the Ministry to its statutory duties. That testimony by Mr. Charko conjured up, for me at least, a vision of him as the person responsible for the operation of an institution withdrawing supervision of the persons confined therein because they wanted greater

autonomy. In such a vision the abandonment or dereliction of responsibility or duty would be no greater than the Ministry's withdrawal of supervision and inspection of societies because the societies or some of them wanted greater autonomy.

Throughout the testimony relevant to the relationship between the Ministry and the societies it was apparent to me that the Ministry, in whatever it did purportedly to oversee the societies, confined itself for the most part to contact with the local directors of the societies. The Society was no exception.

For the most part Mr. Mainville's contacts were with Mr. Lovatt. So were Mr. Charko's. They relied on Mr. Lovatt to relay to the Board of Directors of the Society any information or advice they gave to him. It would seem that that was so even in situations where criticism of the Society or its personnel or its operations were concerned.

On occasion Mr. Mainville and Mr. Charko did meet with the Board of Directors of the Society. I did not sense that in any way were such meetings intended to be supervisory or inspectorial in nature or to be a vehicle whereby Mr. Mainville or Mr. Charko would review with the Board of Directors all that had been discussed with Mr. Lovatt.

While Mr. Charko had prepared an assessment of Mr. Lovatt's performance of his new responsibilities before he was confirmed in the position of Local Director of the Society, that assessment was retained by the Ministry. It was not made available to the Board of Directors of the Society. The Society was not apprised of anything more about the assessment beyond notification that Mr. Lovatt possessed educational qualifications which, together with his experience in social work, were, in the opinion of the Minister, suitable for the position.

In my opinion this was another instance in which the Ministry should have advised the Society. The position of local director is an important and responsible position. It involves many areas of social work and of administration. In my opinion the Ministry was remiss in not advising the Society of the particulars of Mr. Charko's report, including



comments, if any, upon any areas of weakness in Mr. Lovatt's qualifications.

Apart from that initial assessment of Mr. Lovatt the Ministry did not assess the Society or its personnel. The Ministry made no effort to assess Mr. Lovatt's performance of his duties after he was confirmed as Local Director of the Society. Nor did the Ministry take any steps to ensure that the Society had any mechanism to assess the capabilities and performance of Mr. Lovatt and the persons, such as Mrs. Harvey, who were in supervisory capacities.

That was a continuation of what I perceive to be the failure of the Ministry to advise the Society when it was considering Mr. Lovatt's appointment as Local Director of the Society.

The Society had no mechanism to assess Mr. Lovatt and supervisory employees, but it did have a procedure to assess the subordinate employees.

Employees of the Ministry indicated that had any society requested the Ministry to assess any senior employee that request would have been granted. None of them could remember any such request having been made by any society. It would seem that too was just another area in which the Ministry was available, but was not called upon.

As much as anything, the lack of any such requests demonstrates the futility of the Ministry's stance of supervising and advising by being available.

In my view merely being available to furnish advice if and when asked does not adequately fulfill the Ministry's duty to advise. Certainly it does not in any way constitute supervision and inspection.

Mr. Charko seemed to rely upon the provisions of the Act as a justification for the practice of the personnel of the Ministry to confine most of its communication or contact with a society to communication or contact with the local director to the exclusion of the board of directors of that society. That applied to the Society.



If I correctly understood his testimony, a portion of which is reproduced earlier in this Chapter, he had hoped the Ministry could have had more direct contact with the boards of directors of the societies, but he felt that was prevented by the terminology of the Act. He said the Act makes the local directors responsible to the Director appointed under the Act. I am at a loss to understand how that imposition of a responsibility upon the local director can in any way inhibit the Ministry from communicating directly with the boards of directors of the societies. In my view Mr. Charko is in error in his understanding.

I gather that the Ministry's personnel felt they could not advise the board of directors of a society against appointing as the local director of the society someone who was favoured by the board of directors but who, in the opinion of Ministry's personnel, was not qualified.

To my mind, if that had occurred in fact, such a withholding of advice or comment would be a gross dereliction of duty by the Ministry.

That was not the Ministry's position with reference to Mr. Lovatt's appointment by the Society. The Minister specifically approved of his appointment, but without advice as to the basis for such approval.

In my view that approval would have been more meaningful if it had been accompanied by Mr. Charko's assessment of Mr. Lovatt and his performance of duties together with any other material upon which the Minister based his decision to approve the appointment.

There was no testimony as to the contents of Mr. Charko's report upon Mr. Lovatt and his performance. Since Mr. Lovatt is only human I assume that Mr. Charko could not have found him to be perfect in every respect. The testimony upon the Inquiry supports that assumption.

The Ministry's approval of Mr. Lovatt's appointment might have been more helpful to the Society and to Mr. Lovatt had it suggested to the Board of Directors of the Society that Mr. Lovatt did

have some imperfections or weaknesses. With that type of comment from the Ministry the Board of Directors would have been in a position to try to reinforce any area of weakness so as to prevent problems in the future.

Without that comment the Board of Directors were not aware of any areas of Mr. Lovatt's performance which might require any attention from the Board. I am satisfied that the Board of Directors, primarily composed of persons without any formal training or experience in social work or child welfare, was itself unable to assess the performance of Mr. Lovatt or any other member of its staff. The Board of Directors could look to Mr. Lovatt for appropriate assessment of his subordinates, but would have to look elsewhere for any assessment of Mr. Lovatt.

Another portion of Mr. Charko's testimony touched upon what he perceived to be difficulties encountered by the boards of directors of societies as they try to make decisions. He said, in part:

"...In my opinion the board should be more aware what's going on. I have a feeling at times that board doesn't know everything, because the board makes the decision on the basis of information that is presented to the Board and it doesn't have to be misleading information, it's simply not complete information, that means the board is making decision on only fifty percent of proper information that it receives. The board doesn't have capability of analyzing certain facts, right."

It would seem to me that that might apply to the Board's consideration of and decision upon Mr. Lovatt's appointment as Local Director of the Society. The Board had some information, but I must doubt that it had full information.

In the light of Mr. Charko's acknowledgement that complete information is not always provided to the boards of directors of societies, it is all the more disturbing that the Ministry, in its dealings with the Society, as with other societies, confined its contact to communication with

Mr. Lovatt, the Local Director, and relied on him to relay the appropriate information to the Board.

To my mind that practice assumed an unduly high standard of expectation. It would seem to be unreasonable to expect a local director of a society to report to the board of directors of the society that the Child Welfare Supervisor of the Ministry had expressed harsh criticism of the local director's ability or performance. That would be particularly so if the local director had any doubts and uncertainties as to the security of his or her employment.

In my view it would have been reasonable for the Board of Directors to depend upon the Ministry for assessment of or comment upon Mr. Lovatt and his performance. In the absence of any testimony to the contrary, apart from consideration and rejection in 1975 and 1976 of Mrs. Woods' proposal for an independent evaluation of the Society, it would seem that the Board of Directors relied upon the Ministry for such an assessment.

Mrs. Woods herself testified that she too felt it was something the Ministry should have done. Thus even her proposal was not to be regarded as an acknowledgement to the contrary.

In my opinion even if the contact between personnel of the Ministry and Mr. Lovatt were to be regarded in some way as being fulfilment of the Ministry's duty to advise, supervise and inspect the Society and its operation and records, there was an acknowledged absence of such advice to and supervision and inspection of the Board of Directors and its operations and records. The Board of Directors is an integral part of the Society and the Ministry cannot avoid its duty to and in respect of the Board of Directors.

In summary, in my view the Director appointed under the Act did not, during Kim's lifetime, fulfill the duties imposed upon him by the Act to advise, supervise and inspect the Society and its operation and records. The Ministry was responsible for the Director's failure.



### PART III

#### Financial Affairs

Mr. Macdonald testified that the primary role of the Ministry was to provide funds to the societies.

From the view of the societies the Ministry is their primary source of funds. For all practical purposes the Ministry provides about eighty per cent. of the monies expended by the societies to provide for their care of and service to children and their families. In addition the Ministry provides grants towards the costs of erecting or acquiring buildings to be occupied in whole or in part by the societies. Such capital grants may be paid to the societies or to the municipalities in which they carry on their operation.

Substantially all of the balance of the monies required by the societies are provided by the municipalities, having been raised by municipal taxation.

In addition to such public funds the societies may receive funds from private sources. Subject only to the terms imposed by the donors thereof, such private funds may be used by the societies as they decide without reference to the annual budget procedures which determine the amounts of funds to be provided through the Ministry and the municipalities.

The Act and the Regulations made thereunder prescribe the procedure required to establish the operating budgets of the societies for each year. It is a lengthy procedure which usually begins in the later part of the year preceding that to which it relates. The procedure is not usually completed until several months of the current year have elapsed.

It was that procedure, together with matters related to or arising from it and its results, which Mr. Lovatt said involved so much of his time and effort and caused so many difficulties particularly during the years in which Kim lived.



Essentially the budget procedure begins when each society prepares, perhaps in November of each year, a preliminary estimate of its expenditures for the coming year. That document is submitted to the Ministry for comment. Early in the current year the Society then prepares a proposed budget setting forth its estimated expenditures for the current year and submits it to the municipal councils of the municipalities it serves. Assuming that the municipal councils approve the proposed budget the society submits it to the Ministry for approval by the Minister. The Minister may approve the proposed budget, in which case it becomes the budget.

In the alternative the Minister may propose some alterations of the budget. If so the Ministry advises the society and the appropriate municipal councils of the alterations proposed by the Ministry. If the proposed alterations are acceptable to the society and the municipal councils the Minister then approves the budget, amended as proposed by the Minister, and that document then becomes the society's budget for the year.

If the changes proposed by the Minister are not acceptable to the society or the municipal councils or any of them, they or one of them may request the Minister to refer the matter to a child welfare review committee. The child welfare review committee receives testimony and submissions from all concerned and reports its findings and recommendations to the Minister. The Minister then reviews the matter and the Minister's decision thereafter as to the budget estimate to be approved is final.

The testimony upon the Inquiry was all to the effect that the availability of funds within the Society had no direct bearing upon any aspect of the Society's management of Kim's case. That may very well be so, but the adjective "direct" seems to me to be important.

Throughout the testimony of persons connected with the Society I sensed a pervasive concern with financial matters. Mr. Lovatt was the prime example. Mr. Higgins spoke of the role of a member of the Board of Directors as being "a watch dog for all the citizens of the community to see that the money was being wisely spent." Others spoke of the

interest which members of the municipal councils appointed to the Board of Directors had in expenditures. Mrs. Woods spoke of restraints on expenditures as a factor in the decision not to seek an independent assessment of the Society. Mr. Zwerver said vital office supplies were not available because Mr. Lovatt said funds were not available for that purpose in March, 1978, the third month of a new financial year.

Some of Mr. Zwerver's testimony was the most telling in this area. He said almost everyone in the Society expressed an unusual amount of interest in financial matters. He said it was obvious to him that that concern affected many decisions.

Given that concern of the personnel of the Society I am led to share Mr. Zwerver's view that some decisions were affected by financial considerations. I have no reason to believe Kim's case was not one in which, however indirectly or subliminally, financial considerations played a part.

Mr. Macdonald testified that 1975 was the last year in respect of which financial constraints were not applied by the Ministry to the budget proposals of the societies.

He said that the Society's budget proposal for the year 1975 was submitted and approved in the amount of \$567,067.00 with a further provision of \$31,249.00 to defray the deficit incurred in 1974.

Mr. Macdonald testified that that proposal had been subjected only to minimal guidelines and had been approved with only minor modification. Nevertheless, the Minister's approval was not granted until July 24, 1975. Almost seven months of the year to which it applied had elapsed.

It would seem to me that seven or more months of uncertainty as to whether sufficient funds would be available to the Society could only heighten and not abate any undue interest that the staff of the Society had in the financial matters of the Society.

The programme of constraints applicable to the budget proposals for the year 1976 was announced in December, 1975. The Ministry's announced intention was to restrict any increase in the budget of any society for the year 1976 to an amount equal to 5.5% of the amount of that society's approved budget for 1975.

The Society's budget proposal for 1976 was submitted in the amount of \$661,000.00, which Mr. Macdonald said represented an increase of about 16% over the approved 1975 budget as opposed to the Ministry's restraint at 5.5%. The Minister approved the submission at the reduced figure of \$638,835.00, which Mr. Macdonald said represented an increase of about 12% over the approved 1975 budget or about 3.2% over the Society's actual expenditures in 1975. In addition the Ministry provided for the payment of the deficit of \$50,787.00 incurred by the Society in 1975.

The Minister's approval of the Society's budget for 1976 was signed on June 14, 1976. Almost six months of the year had elapsed. By letter dated May 7, 1976 the Minister had written to the Society announcing his intention to grant that approval. That letter appears to have been written in compliance with the Act so as to enable the Society and the municipalities, if they wished, to request the Minister to appoint a child welfare review committee. No such request was made. The Minister's letter stated that the approval represented an increase of 5.5% over the Society's actual expenditure in some categories of the budget in 1975 and an increase of 5.5% over the Society's approved estimated expenditures in other categories of the budget in 1975.

In fairness to the Society, that approval of an amount in excess of the limits proposed by the constraint programme of the Provincial Government and Ministry, must be viewed in the light of the position adopted by the Ministry and the Minister in December, 1975 and maintained by them for some months thereafter.

Under the original position taken by the Minister and the strict application of the limitation of the increase in the Society's budget, the Society,

according to Mr. Macdonald's calculations, would have been expected to limit its 1976 budget to about \$598,000.00.

The Society's actual expenditures in 1975 had been \$617,854.00. So the strict application of the constraints would have required the Society to reduce its expenditures in 1976 to a figure about \$20,000.00 less than it had actually spent in 1975.

The absolute lack of realism in that approach is apparent. The Ministry was acknowledging that a limitation of 5.5% represented a constraint. It was ludicrous to apply that limitation as a percentage of a budget which had been exceeded by a greater amount in the prior year.

The Ministry now, in my view, only can choose one of two explanations for the position that existed for it and the Society at the end of 1975 and the beginning of 1976. Neither is complimentary to the Ministry or to the Society.

The first explanation would be that in respect of the Society's operations in 1975 and prior years the budget procedure was a meaningless charade.

The audited financial statements of the Society for the years 1973 to 1977 inclusive were produced as an exhibit upon the Inquiry. I have prepared the following table on the basis of those statements for the years 1973, 1974 and 1975.



Year	Approved* Expenditure	Actual Expenditures	Deficit	Deficit as a percentage of approved expenditures (approximate)
	\$	\$	\$	%
** 1973	419,544	441,499	31,564	7.5
1974	475,257	506,506	31,249	6.5
1975	567,067	617,854	50,787	9

\* These figures apparently do not include the amount of any deficit in the prior year.

\*\* In 1973 the actual payments by the Ministry and Municipalities were in the amount of \$409,935.00, which is \$9,609.00 less than indicated in the budget. That \$9,609.00 apparently is part of the figure of the deficit for that year in the amount of \$31,564.00.

For three successive years the Society had substantially underestimated its expenditures and had incurred quite substantial deficits.

There was no testimony to indicate that the Ministry took any steps to inquire into or to correct whatever miscalculations led to those deficits. It would seem that the Ministry, at least in respect of the deficits incurred in 1973 and 1974, merely gave retroactive approval to amendment of the earlier approved budgets to accommodate the deficits. As a result of such retroactive approval the Ministry paid its proportionate share of the deficits and the municipalities were required to pay the balance.

The alternative explanation is that the Ministry's supervision and inspection of the Society and its operations was inadequate. Either the Society maintained improper records to support its budget calculations or it was not exercising appropriate control of its expenditures or it did not correctly understand or interpret its own records or did not correctly identify and assess whatever trends

or developments might have been revealed by those records.

There was no testimony that the Ministry took any steps to remove the cause of the deficits, that is, to improve the recording procedures of the Society if the deficits were rooted in faulty records or to improve the financial procedures within the Society if the deficits were rooted in any faulty financial procedures or to improve the ability of the Society to identify and assess trends or developments within the Society if the deficits were rooted in any deficiency in that area.

The position adopted by the Ministry and Minister in December, 1975 and maintained for some time thereafter in respect of the Society is shown to be all the more ludicrous because it included a statement that deficits incurred by societies in 1975 would not necessarily be retroactively approved by the Minister.

The initial position of the Ministry and Minister vis a vis the Society in early 1976 can be shown in tabular form as follows:

Year	1975	1976
	\$	\$
Approved budget	\$567,067	\$598,255
Deficit on operations	\$ 50,787	Deduct \$ 50,787 to pay 1975 deficit
Amount expended/ available in year for current expenditures	\$617,854	\$549,042

The Society's approved budget for 1974 was about 7.6% above its actual expenses in 1973. Its 1975 approved budget was about 12% above its actual

expenses in 1974. There was certainly a feeling, well-founded, that apart from any reduction of demand for the Society's services, its expenses in 1976 would be greater than in 1975. The Provincial Government and the Ministry recognized the upward trend of costs. The Society was justified in feeling that approval of its budget for 1976 would recognize that trend.

Instead the Ministry and Minister very deliberately and determinedly took a firm position. The Minister would approve a budget proposal of no more than \$598,255.00 and the 1975 deficit would be the subject of separate negotiation.

Mr. Lovatt, in his testimony, said that he had been told by staff of the Ministry that the deficit for 1975 might not be approved. If it were not approved the Society might have been in the position of reducing its expenditures in respect of 1976 matters or obtaining funds from sources other than the Ministry.

In addition the Minister, in a letter to the then President of the Society dated February 9, 1976, had written that he was prepared to approve the Society's estimates for 1976 in the amount of \$598,256.00. That represented strict application of the 5.5% limit or restraint. That letter contained no reference to the deficit incurred by the Society in 1975, but did contain the following paragraph:

"We remind you that there will be no funding available to accommodate potential 1976 deficits and Societies must control their expenditures to ensure a balanced budget at the end of the year. We should also note that municipalities are free to provide special grants to the Children's Aid Societies to supplement regular provincial and municipal funding, and Societies are free to seek funding from other sources."

Such a letter could not have given much comfort to the Society which had submitted a preliminary estimate in the amount of \$661,000.00 and had incurred substantial deficits in at least the three preceding years.

All of the statements from the Ministry were pious and high sounding. It was the Ministry's stated hope that notwithstanding the constraints the societies would be able to operate with the same effectiveness in all essential areas and that "children would not suffer as a result of the financial constraints." That last clause appeared in a memorandum from the Minister to the Society which is dated March 12, 1976.

The fatuity of the Ministry's statements in December, 1975 and for some months thereafter was demonstrated by the testimony of Mr. Macdonald and Mr. Charko. From time to time each of them in his testimony spoke of the difficulties encountered by the Child Welfare Branch of the Ministry because of the constraints. The Branch was unable to hire persons to replace some who left the Branch. The Branch was unable to complete its proposed return to the use of Child Welfare Supervisors to visit the societies when the Branch, without any considered or announced decision to do so, effectively withdrew the service of the "readers" by permitting that service to wither away to nothing. There was a void in the Branch.

Therefore I am satisfied that, within the Branch a service to the societies which had withered to nothing by 1974 and 1975, when the Ministry was intending to revert to what had previously existed, was not replaced in 1976 and a void existed until March, 1977 when the Branch was able to begin a programme of hiring Child Welfare Supervisors.

That void existed throughout virtually all of Kim's life and certainly during the crucial year of 1976 when decisions were made which allowed Kim to be in a place of danger and ultimately to die as a victim of child abuse.

In that one area, the Branch had provided in prior years a service of a form of supervision and consultation delivered by Child Welfare Supervisors who were qualified and experienced. They were few and their task was, in Mr. Mainville's word, "impossible" given the number of societies assigned to each Child Welfare Supervisor. But it was a service. Some of that service was withdrawn to be replaced by visits and surveys by "readers" who were



not qualified social workers and thus were not qualified to supervise, inspect and advise the societies. Even that inadequate service too was withdrawn in 1974 and 1975. It was not replaced because the Branch was unable to employ the people necessary to deliver the service it intended to provide.

In the light of the Ministry's position it seems to me that again the Ministry has its choice of two unflattering explanations. Firstly the service it was delivering to the societies prior to 1975, either by Child Welfare Supervisors or by "readers," was unnecessary and thus, in the interests of economy, could and should be terminated.

If the Ministry chooses that explanation it acknowledges that for years it provided an unnecessary service to the societies. It would further acknowledge that it had planned to re-institute an unnecessary service after 1974 and 1975 by returning to the earlier programme of Child Welfare Supervisors.

The second choice is no more flattering to the Ministry. It would be, as the testimony of Mr. Macdonald and Mr. Charko upon the Inquiry put it, that the Branch was being reorganized and in that process the complement of "readers" was eroded by attrition while the Branch intended to restore the prior service of Child Welfare Supervisors. It would continue that, despite the Branch's intentions, it was unable to do as it intended because controls imposed on or by the Ministry prevented the Branch from hiring the necessary persons to enable it to fulfill its intentions.

If the Ministry chooses that explanation it acknowledges that its financial constraints prevented it from continuing a service which it felt was necessary to the societies. Bearing in mind the overall duty upon the Ministry and the societies to protect and serve children, it would seem that, if a necessary service to the societies is not provided by the Ministry, neither the Ministry nor the societies could, as readily as they could earlier have done, ensure that "children would not suffer as a result of the financial constraints." Those latter words are part of one utterance by the Minister set forth in

his form letter to the presidents and local directors of the societies, including the Society, dated March 12, 1976.

In my view of the evidence upon the Inquiry the second explanation is more probably the true explanation at least in respect of 1976. The service of Child Welfare Supervisors was a form of the supervision, inspection and advice which the Ministry was bound to deliver to the societies. Even it was not a satisfactory performance of that duty, but it was withdrawn and replaced by "readers" whose services even less satisfactorily fulfilled the duty imposed upon the Ministry if indeed those services were any fulfilment of that duty. When the Ministry decided to revert to the earlier system the "readers" were withdrawn by attrition and were not replaced. There was a void. It was that void which demonstrated as much as anything that the Ministry did not fulfill its duty to supervise and inspect the societies. That void resulted from the Ministry's financial constraints.

In the preceding paragraph I tended to limit the opinion therein stated so as to apply it to the year 1976. According to Mr. Macdonald 1975 was not a year in which restraints were applied to the societies' budget proposals. That may have been so for the Ministry too. If so, the imposition or presence of restraints did not contribute to the creation or maintenance of such a void in 1975. Thus in 1975, without restraint, the void came about because the Ministry simply did not implement its own intention to return to the prior organization whereby Child Welfare Supervisors delivered the Ministry's services to the societies.

In my view the impossibility of the task placed by the Ministry upon the Society in December, 1975 was thus demonstrated by the Ministry's inability to provide an essential service to children, a service which, by statute, the Ministry was required to provide. The Ministry's employees attributed that inability to financial restraints.

One can only ask, why then would the Ministry expect the Society to be able to maintain in 1976 standards of essential service equal to those in

1975, but at the same time spend less money than in 1975.

The letter of Mr. Taylor, the then Minister, to Mr. Henderson, a Member of the Legislative Assembly representing the area of the County of Lambton and a member of the Provincial Government, in February, 1976, is a further demonstration of the fatuity of statements from the Minister and the Ministry about that time.

In January, 1976 officials of the Society met with Mr. Henderson. On behalf of the Society they expressed concern about the impact upon the Society and its operations if the Ministry's restraints upon expenditures were literally and strictly enforced. They advised Mr. Henderson of some local conditions which, they felt, should lead to some relaxation of the controls in their application to the Society for its 1976 estimates.

Specifically they pointed out that the number of children in care had risen from 129 in 1974 to 143 in December, 1975. I presume Kim was one of the children represented by the increased figure. That increase, arithmetically, was about 11 per cent.

They repeated some of the concerns expressed by Mr. Lovatt in his letter to the Ministry dated December 13, 1974 which ultimately, with a subsequent and supporting brief, led to the Ministry's approval of the employment of two additional workers in December, 1975. The employment of those two would, of itself, represent a substantial increase in the Society's expenditures in 1976. On the basis of Mr. Lovatt's testimony I estimate the amount of that increase to be about \$25,000.00 per annum for salaries and fringe benefits, which is about 4.4% of the approved budget expenditures of the Society for 1975. That one item would represent about eighty per cent. of the Ministry's proposed 5.5% restraint.

If the Ministry were to adhere strictly to its stated position of approving the Society's estimated expenditures for 1976 in an amount equal to 5.5% above the 1975 estimated expenditures of \$567,067.00, the increase from 1975 to 1976 would have been about \$32,000.00. If \$25,000.00 were needed to provide for the two additional employees



whose hiring was approved by the Ministry in 1975, there would be about \$7,000.00 left to meet all other anticipated increases in costs.

In 1974 the Society had 23 employees. Even if the entire \$7,000.00 were allocated to provide increased salaries for them each, on average, would receive an increase of about \$300.00 per annum. That was totally unrealistic in the light of the then rate of inflation which Mr. Lovatt testified was about 10% per annum. In 1975 the Society's total expenditure on salaries and staff benefits had been about \$311,000.00. If that were increased by \$7,000.00 it would represent an increase of about 2.2%. That is equally unrealistic.

The Society reminded Mr. Henderson of the influx of workers engaged in construction of new industrial facilities. They anticipated a much heavier demand for the Society's services because of that influx.

Mr. Henderson then wrote to Mr. Taylor under date of January 30, 1976. His letter set forth all of the above as well as some other comment. He asked if any additional consideration could be given to the Society's difficulties.

Mr. Taylor replied to Mr. Henderson by letter dated February 17, 1976. It was harsh, blunt, adamant and, as Mr. Taylor wrote, unequivocal in its refusal of any further consideration of the concerns raised by the Society.

It is a short letter; so I reproduce the body of it in its entirety here rather than in the schedules to the Report. It was as follows:

"Thank you for your letter regarding the Lambton County Children's Aid Society and I sincerely regret that the answer is unequivocally 'No.'

The 5.5% increase is not negotiable and I think Darcy will confirm this to you. A letter has gone out to the Sarnia Children's Aid Society explaining the 1976 approved estimates and I am enclosing a copy for you.



I do realize that these constraints on spending have aroused a good deal of concern and certainly the Societies will have to make a thorough examination of all their services and activities. However, I feel sure that essential services will be maintained."

That was certainly not in keeping with Mr. Taylor's statement to the meeting of presidents and local directors of the societies convened by the Ministry on December 18, 1975. At that time Mr. Taylor had said,

"It is expected that in curtailing the growth of expenditures that you will make selective cuts in order to preserve the present level of service supplied. Rather than spell out specific detailed instructions for budget cuts I feel that we, together must make that decision taking into account local variance and needs."

Mr. Taylor's letter was a curt refusal to "[take] into account local variance and needs." Using the trite fad terminology of the time he said "the 5.5% increase is not negotiable."

Mr. Henderson forwarded a copy of that letter to the Society along with a copy of Mr. Taylor's letter of February 9, 1976 to the President of the Society. He said both letters were self-explanatory. I share that view. There was no room for misunderstanding of Mr. Taylor's position.

Mr. Lovatt's testimony puts the Ministry's original stance in its appropriate place in relation to the facts of the Society's position in December 1975 and early 1976. In 1975 its expenditures had been \$617,854.40, which was \$50,787.40 in excess of its approved estimates. The Ministry was unequivocally stating that, regardless of local conditions claimed by the Society, only \$598,256.00 would be approved for expenditure in 1976 and, perhaps, the Society would have to pay the 1975 deficit of \$50,787.40 without the Ministry's assistance which might ordinarily have amounted to about \$40,000.00 and without the statutorily assured payment of the

balance by the City of Sarnia and the County of Lambton.

The best the Society could expect was approval of expenditure of \$598,256.00 which would be \$19,598.00 less than its actual expenditures in 1975 and the Ministry and municipalities would assist as usual in retirement of the 1975 deficit.

The worst the Society could expect would be approval of \$598,256.00 out of which it would have to pay its 1975 deficit of \$50,787.40 leaving, \$547,469.60 for expenditure on 1976 matters. That would mean the Society would have available for 1976 matters \$70,385.00 less than it actually spent in 1975 and \$113,531.00 less than it estimated it would need in 1976, namely \$661,000.00.

Mr. Lovatt was asked where reductions of that magnitude might be made in the Society's estimated expenditures. He said it could not be achieved by reduction of the allowance for salaries, which was about \$300,000.00. He said it could not be achieved by reduction of Boarding Home Fees, which were about \$159,000.00 in 1975, without reducing the number of children in care. He said it could not be achieved by reduction in Building Occupancy costs which, even in 1978, were estimated by him to be less than \$30,000.00. He said it could not be achieved by reductions in other areas without reducing the service provided by the Society.

In the light of inflation in 1976 at the rate of about 10% and growth in Sarnia which justified the employment of two additional workers in late 1975 for 1976, it was totally unrealistic for the Ministry to expect the Society to reduce its expenditures in 1976 to \$598,256.00, let alone to \$547,469.00.

I am satisfied that in early 1976 the "unequivocal" position of the Minister created for Mr. Lovatt a situation verging on frustration and despair. It could not help but have affected his approach to his work. It could not help but have been known to others in the Society who would be affected. It is, of course, impossible to measure or assess any such effect or even to say that it in any way influenced any decision relative to Kim.

That state of despair and frustration would of course have been somewhat alleviated in May, 1976 when the Ministry advised the Society that expenditures in 1976 in the amount of \$638,836.00 and the 1975 deficit would be approved.

It is at least a co-incidence that the decision to return Kim on May 27, 1976 was made early in May, 1976 before that alleviation was known to the Society.

It may also be a co-incidence that Mr. Lovatt in his report to the Board of Directors in January, 1976 following the meeting convened by the Ministry in December, 1975 stated that, among other matters suggested by the Ministry, the societies were being asked to "trim services by cutting back on admission of children into care." He went on to say that to stay within the limit of the restraint "would require a reduction of 1/3rd children in care or a similar cut in staff."

Thus in January, 1976 thought was given to reducing expenditures by reducing the number of children in care. Kim was one of those children in care at the time. I am not prepared to find that concern about the budget for 1976 did not have an indirect almost insidious effect upon Kim. Mrs. Harvey's decision in February, 1976 that Kim should be returned to her parents may very well have been in part the result of the presence of that concern about the budget.

It is my view that it is intolerable for an organization such as the Society to complete five or six months or more of its operations for a year in uncertainty as to whether or not it will have funds available to meet what it perceives to be its needed expenditures.

That uncertainty can lead to two possible results neither of which is satisfactory. The societies, with caution and concern that their estimates will not be approved, may limit their expenditures during the several months awaiting the Ministry's decision. If their estimates are later approved they in effect, have available to them funds which should have been spent on their needs in the



earlier months and which are in excess of their needs for the balance of the year.

Alternatively, the societies, with optimism and confidence that their estimates will be approved, expend funds on the basis of those estimates during the several months awaiting the Ministry's decision. If the Ministry does not approve the estimates they, in effect, have already spent funds which should have been retained for needs arising in the later months.

In the first instance the societies have possibly deprived or inadequately served the children whom they served in the earlier months. In the second instance they have done that to the children whom they served in the later months.

Only if the actual spending by the societies in the earlier months conforms to the amount eventually approved by the Ministry can there be a relatively consistent policy on expenditures. I am satisfied on the evidence that consistency and continuity are desirable features in the provision of services by the societies. With five or six or more months of each year elapsing before the societies are ensured that certain amounts will be available to them, it is virtually impossible for them to achieve those desirable features.

That would be particularly so if, as occurred in relation to the 1976 estimates, the Ministry sought to impose arbitrary and "across-the-board" restraints on the societies and, in fact, contrary to its published intention, refused to consider unusual local circumstances.

Mr. Macdonald's testimony was that after that experience in 1976 the Ministry sought to effect restraint, but, at the same time, to recognize local conditions.

I was tempted to doubt that testimony when I examined the process applied to the Society's estimates for 1978. Mr. Lovatt prepared an initial estimate in the amount of \$821,500.00. It was rejected by the Ministry who proposed a reduction to \$724,802.00. Mr. Lovatt prepared a second estimate in the amount of \$776,800.00 which was being reviewed by the Ministry when Mr. Zwerver requested the



Ministry to withhold its review and decision pending his preparing, with Mr. McCabe, a revised estimate. That last estimate was submitted and quickly approved in the amount of \$853,739.00.

I accept Mr. Zwerver's testimony that the amount of the last estimate was in keeping with the Ministry's guidelines and requirements for preparation of the 1978 estimates. He did voice criticism of Mr. Lovatt's earlier submissions to the effect that they had not met those requirements.

More significantly, as I consider the role of the Ministry in Kim's life, he acknowledged that the actual experience of the Society during the early months of 1978 was of assistance to him and Mr. McCabe in preparing their submission. Mr. Lovatt could not have had that actual experience as a basis for his initial submission and would have had only part of it for his second submission.

Having accepted that testimony of Mr. Zwerver I must conclude that by 1978 the Ministry was prepared to recognize local conditions. It had recognized that it was unrealistic to seek to apply restraint without regard for unusual local circumstances.

In my view it is imperative to the efficient operation of the societies that the Ministry grant its approval of the societies' estimates long before May, June or July of each year.

If the Ministry were to fulfill properly its duty to supervise, advise and inspect the societies there is no reason for there to be lengthy periods of time spent on review of the societies' budget submissions each year. The Ministry itself demonstrated that in relation to the Society in June, 1978.

I acknowledge that the demonstration occurred under unusual circumstances. The Society was the subject of much attention from the Ministry from December, 1977 and particularly from March 7, 1978 when Mr. Zwerver was appointed by the Ministry to be a Special Field Consultant responsible for the operation of the Society from March 13, 1978.

From March 13, 1978 Mr. Zwerver, in that capacity provided the supervision, inspection and advice that the Ministry had not been providing to the Society at least during the period from 1974 until 1978. In that capacity, with Mr. McCabe, Mr. Zwerver submitted the revised estimates of the Society for the year 1978 to the Ministry on Tuesday, June 27, 1978, presumably by mail from Sarnia to Toronto. On Friday, July 7, 1978 the Ministry gave its approval to that submission. The formality of approval took at most ten days including the weekend of the Dominion or Canada Day holiday and the postal delivery from Sarnia to Toronto.

I am satisfied that that speedy approval came about for two reasons.

Firstly, Mr. McCabe, as Acting Local Director of the Society, properly fulfilled all of the duties of that office and maintained a close liaison with the Ministry. Initially that liaison was in response to the Ministry's requests for more information and detail with reference to Mr. Lovatt's second submission. Later, as the inadequacy of that second submission was revealed to be larger than at first it appeared to be, Mr. McCabe, with Mr. Zwerver, sought and obtained the Ministry's consent to the preparation and submission of the third and final submission.

Secondly, the Ministry, as represented by Mr. Zwerver, physically in Sarnia and providing supervision, inspection and advice to the Society, was fulfilling its duties. Mr. Zwerver gave Mr. McCabe the full benefit of his experience and skills. In addition the Ministry's personnel in Toronto were kept informed by Mr. Zwerver and Mr. McCabe over the months as they prepared the submission.

With that type of assistance from the Ministry Mr. McCabe was able to prepare a submission which, when presented, was virtually assured of prompt approval because it met all of the Ministry's requirements and was supported by adequate documentation of the bases for its various statistical components and its predictions or estimates of future needs and demands.

In that one instance the Ministry properly and sufficiently involved itself in the preparation of the Society's estimates.

In my view the Ministry should and can provide the same sort of liaison to every one of the societies. It need not be concentrated into a few weeks at the beginning of each year. Its genesis would be adequate supervision and inspection of the societies to ensure that proper records were maintained by each society. It would then proceed through supervision and advice to ensure that each society was appropriately compiling, interpreting and applying the information contained in such records. It would of course be supplemented by further consultation and advice as to the adequacy of the services being provided by each society, including discussion of any suggestions for provision of new or enlarged services or the termination or reduction of any established services.

It might be argued that no valid estimates of expenditures to be made in any year can be made until the whole of the previous year's financial experience is set forth in audited financial statements. Without admitting the validity of that argument, I am prepared to accept it for my present purposes. Assuming adequate supervision and inspection by the Ministry during the preceding year, the audited financial statements are not likely to contain any surprises of any great substance.

In any event it is not likely that the preparation of such audited financial statements need take an excessive amount of time. The auditors retained by the Society submitted their reports in respect of each of the years 1973 to 1976, inclusive, no later than the 27th day of January of the following year. The auditors' report in respect of the year 1977 is dated February 20, 1978. No reason for the delay was given, but it may not be unfair to anyone to assume that the turmoil within the Society which manifested itself in December, 1977 intefered with the Society's usual audit procedures.

In my view it is incumbent upon the Ministry to involve itself in and to assist the societies in the preparation and presentation of their estimates.



I do not see the provision of such advice and assistance as in any way diminishing the autonomy of the societies. It is still open to them to decline to accept the views expressed by the Ministry's personnel and to submit estimates reflecting their own views to be processed in the usual way with the final decision to be made by the Minister who may or may not choose to concur with opinions earlier expressed by personnel of the Ministry.

The distinction between the actions and opinions of the Minister and those of the Ministry was illustrated by Mr. Macdonald as he testified. I asked him for his comments upon the tone of the reply by Mr. Taylor, then Minister, to Mr. Henderson and thence to the Society in February, 1976. His reply was:

"I feel, Your Honour, that that piece of correspondence was a record from one Minister to another Minister within Cabinet. it was not a letter in which the Branch or the staff of the Ministry were involved at all and it was not one that we were, in fact, aware of, so, the tone of the letter is Mr. Taylor's responsibility. I don't think that it in any way indicated the tone of my relationships with the Children's Aid Societies at that time on monetary issues, and we attempted to be as flexible as we possibly could and as tough as we possibly could where possible. So, I have a hard time commenting on that letter because it was not a part of our regular communication process with the Children's Aid Society."

I appreciate that that letter by Mr. Taylor was perhaps prepared under circumstances different from those related to consideration of estimates, but I am satisfied that the views of the personnel of the Ministry will not necessarily prevail with the Minister over the views of a society, particularly if the latter appear to be supported by the report, findings and recommendations of a child welfare review committee.

In my view anything which can be done should be done to minimize the time in the current



year during which the societies are without assurance or confidence as to the financial resources available to them. Ongoing consultation by and with the Ministry would seem to be one such thing. Each party would be immediately aware of the views of the other as they developed and the basis therefor and the validity of such basis. Each would have an opportunity to review and reconsider its opinion and the bases therefor in the light of the opinion expressed by the other and the bases therefor.

The ten days from June 27, 1978 to July 7, 1978 during which the Minister approved the Society's estimates were fewer than it took for the Ministry to respond negatively to the earlier submissions by Mr. Lovatt for the same year. His first submission was dated November 29, 1977 and the Ministry's response thereto was dated January 12, 1978. About 46 days had elapsed. Mr. Lovatt's second submission was dated February 16, 1978. The Ministry had not responded to that, apart from acknowledging its receipt, before Mr. Zwerver went to the Society on March 13, 1978. About twenty-five days had elapsed by then. A short time later the Ministry did request further information and still later the Society sought and received permission to prepare a new submission. There was no testimony as to when that occurred. The specific dates on which those events occurred were not stated by Mr. Zwerver. I believe from the testimony that when Mr. McCabe arrived at the Society on May 22, 1978 Mr. Zwerver was still attempting to gather material to respond to the Ministry's request for information.

In any event even after the expiration of about four months from November 29, 1977 to a short time after March 13, 1978, the issue of approval of the Society's estimates was unresolved and remained so for about three more months.

Mr. Zwerver expressed the opinion that the experience of the Society with reference to approval of its estimates was not atypical. I accept that testimony. In my view the Ministry should long ago have realized the difficulties that its procedures created for the societies and should have corrected the problem.

Mr. Zwerver's testimony was that the issue of the Minister's approval of estimates was "a fairly contentious issue." He said:

"...It tends to drag on during the course of the year depending upon the amount of dollars in contention between individual societies and the Ministry and also the adequacy of the information that's available to make decisions on. I don't think that the timing related to the Sarnia, Lambton Society was particularly atypical. Certainly at that point in time to the best of my knowledge, very few if any societies had their budgets approved, but certainly the gentleman responsible for budget analysis was going through all the budgets to analyze and to make recommendations to Ministry staff, so that they could proceed with the issue of whether approval should or should not be given to a particular budget."

I infer from that testimony that one person was engaged by the Ministry to analyze the budget proposals of all of the societies. That would seem to be a task which in itself would be virtually impossible of completion by one person in a reasonable length of time. But then that analysis was followed by other proceedings within the Ministry to determine whether or not approval would be given.

With fifty societies submitting proposals at about the same time and one person responsible for analyzing each proposal, it is little wonder that the societies were left uncertain as to their position until late in the year.

The evidence upon the Inquiry indicated that throughout all of the years and the re-organizations and re-deployments of its staff, the Ministry did maintain a constant interest in the financial affairs and operations of the societies. The number of memoranda and directives issued to the societies by the Ministry establishes that to my satisfaction. The testimony, too, was that in the years critical to Kim, the years immediately prior to her birth and the two years during which she lived, the personnel of the financial arm of the Branch

remained at a relatively constant level while the number of Field Consultants was reduced and the "readers" resigned or were moved to other responsibilities.

Nor did the Branch content itself by sending out "readers" to conduct financial surveys.

It would seem that while the Branch and the Ministry maintained a constant interest in the financial affairs of the societies, that interest was directed towards matters of form and procedure. The Branch required regular financial reports during each year and audited statements at each year end. By reason of the lack of supervision and inspection of the societies, and in particular of the Society, the Ministry did not assist the Society in the preparation of its annual estimates.

I am aware that the Ministry did issue guidelines and memoranda of a quite general nature. Those relating to the imposition of the 5.5% limit on increases from 1975 to 1976 were examples of that sort of memoranda. They were not specifically directed to the problems that might confront the individual society.

Even administrators and workers, as highly skilled and experienced as Mr. Zwerver and Mr. McCabe were, felt it necessary to have ongoing discussions with the Ministry's personnel over a period of months as they prepared the Society's submission in the months of March to June, 1978. I appreciate that the state of the Society's records as found by Mr. Zwerver and Mr. McCabe contributed to the difficulties they encountered during that time.

My view is that, if the Ministry had been providing to the Society the supervision, inspection and advice which it should have provided, the Ministry should and would have been aware of the deficiencies in the Society's records and procedures.

In my view the Ministry, before March, 1978, did not provide the guidance and assistance in financial matters which it should have provided to the Society.



I am not to be taken as excusing the Society and its personnel, especially Mr. Lovatt as Local Director, for the deficiencies in the Society's records and budget proposals. They and he bear the initial responsibility for the creation of those deficiencies, but the Ministry should have been aware of them and should have required the Society to correct them. The Ministry then shares with them responsibility for the continued existence of the deficiencies.

#### PART IV

##### Standards of Service

There was considerable testimony upon the Inquiry as to the need or desirability for the establishment, maintenance and enforcement of standards to be met by the societies in the performance of their duties.

That testimony tended at times to extend beyond the concerns of this Inquiry. For the purposes of the Report I shall attempt to confine my comments to the portions of that testimony which related directly to the provision of services by societies in relation to actual or suspected or reported instances of abuse to children. Kim's was such an instance.

On that testimony I am satisfied that the preparation of documents to incorporate standards for the management of cases of child abuse is a formidable undertaking. It requires knowledge, skill, experience and time.

With all due respect to the Society and its personnel, those elements were not present in the Society in the years immediately prior to and during Kim's life.

On the testimony I would expect that the Society was not alone in that position.

The general tenor of the testimony was to the effect that, because of the size of the task, the duty lay upon the Ministry to develop and publish



standards for the handling of various types of cases, including cases of child abuse, by the societies.

Until the Inquiry was convened the Ministry had not fulfilled that duty.

There was testimony that even prior to Kim's birth, Dr. Hugh Hanson, in a report commissioned by and made to the Ministry in 1974, had urged the Ministry to develop standards to be applied in child welfare cases. That would include cases of child abuse.

Mr. Macdonald and Mr. Mainville in their testimony acknowledged that the Ministry was responsible for the development and publication of such standards. Mr. Mainville added that the Ministry bore the further responsibility of ensuring that the societies met those standards.

It is my view that that testimony is correct. The development and enforcement of such standards falls clearly within the Director's, and thus the Ministry's statutory duty to supervise and advise the societies.

In 1976, at about the time of Kim's death, The Ontario Association of Children's Aid Societies did publish a lengthy document entitled "Guidelines for Practice and Procedure in Handling Cases of Child Abuse." The Ministry was not directly involved in the preparation of that document although it was financially involved through its funding of the Association directly and indirectly through the societies.

Even if the Ministry could take credit for that publication and claim it to be a fulfillment of its statutory duty to develop and enforce standards it was too late for Kim. The document indicates it was published in July, 1976, but the uncontradicted testimony was that the Society did not receive a copy of it until after Kim's death.

It would seem that Dr. Hanson's report was not the first document to call upon the Ministry and fulfill its duty and prepare standards. Neither the recommendation of Dr. Hanson's report nor those of its precursors was acted upon by the Ministry. The

Ministry's response to Dr. Hanson's report seems to have been to enter upon a round of reorganization which never was fully accomplished although much effort was expended by the Ministry and some of the societies, including the Society.

Some aspects of the reorganization were undertaken. One such aspect was the termination of the services of the "readers." Had the Management Information System, part of the proposed reorganization, been developed there would have been no need for the services provided by the "readers." The "readers" were allowed to disappear, but the Management Information System was not implemented and its development was abandoned before completion because of some other changes within the Ministry.

What might be viewed as the tragedy of all of that is that effort and time were spent prior to Kim's birth and during her lifetime in an effort to accommodate case management procedures within some technological framework of recording cases. Had that been done it might have produced good results at some time in the future. But in the end, that effort was abandoned, unfinished. The time and effort spent produced effectively nothing.

But, in all of that, the Ministry neglected the urging of Dr. Hanson's report to the effect that development of standards was of paramount importance and should proceed immediately in 1974 regardless of whatever steps were taken by the Ministry in reorganization or otherwise.

It is pure conjecture of course, but it would seem that, had the Ministry, in 1974, followed the advise and urging of Dr. Hanson and set about at once to prepare standards for the handling of cases of child abuse, there is every likelihood that at least preliminary or draft standards might have been published before September, 1975 and thus would have been available to the Society during all of its involvement in Kim's life.

If that had happened one might hope that the Society's management of Kim's case would have produced happier results.

The logic of Dr. Hanson's recommendation appeals to me. It is my view that the development of appropriate standards of case management was of immediate concern and should have proceeded no later than 1974. Indeed it would seem that the Ministry had been urged even prior to 1974 to develop standards.

I am of that opinion in full realization that any standards so developed might require amendment from time to time to accommodate changes within the organization of the Ministry or the deployment of its personnel.

But surely standards of case management are not static. Learning and experience inevitably lead to change. It is for that reason I share Dr. Hanson's view that, regardless of whatever else it might have undertaken, the Ministry should have begun to develop such standards in 1974. Those standards would require virtually constant examination in the light of developments in Ontario and elsewhere in the field of child welfare. Dr. Turner spoke of the need of individual social workers to keep themselves current in their practices and procedures. I should think the Ministry has an even higher duty to keep itself current and that would include keeping its standards current.

When I recall the frequent use by employees of the Ministry of words and phrases to the effect that the Ministry was studying or reviewing or looking at various aspects of its operations it would seem to me that an ongoing review of its standards might very well have been a part of all that study and the like.

It may be that the Ministry was seeking an ideal organization. However in so doing it failed to do some of what it could and should have done. One such thing was the development of standards for the management of cases of abuse of children.

An adjunct of the development of such standards would have been performance by the Ministry of its statutory duty to supervise and inspect the societies to ensure that the societies were meeting those standards.



At the same time, 1974 and 1975, that the Ministry disregarded Dr. Hanson's recommendation to proceed with the immediate development of such standards, the Ministry found itself without sufficient or adequate personnel, in terms of numbers and of qualifications, to enable the Ministry to supervise, inspect and advise the societies. It had only two Child Welfare Supervisors to deal with fifty societies. Its staff of readers had disappeared by permitted attrition. Even if the Ministry had developed standards it could not have ensured that the societies would even try to meet them.

It was not until late 1978 that the Ministry was able to announce its intention to conduct examinations or reviews of the operations of the societies. Even then the standards to be met by the societies were just being developed.

I am satisfied that the flurry of activity in the Ministry in 1978 to develop standards and to institute reviews of the societies by qualified persons came about at least in part, a very large part and perhaps solely because of the publicity surrounding the highly publicized cases of abuse, including Kim's, which were mentioned during testimony upon the Inquiry.

While each of the societies should be free to develop its own standards for the management of various types of cases, those standards should meet at least the standards developed by the Ministry as the minimum standards acceptable anywhere in Ontario. It may be that the standards developed by the Ministry will require recognition of the presence or absence of certain facilities in some regions of Ontario.

The management of Kim's case by the Society was so grossly inadequate that one would be hard pressed to suggest that the Ministry's failure to develop standards for the societies' management of child abuse cases played any part in the tragedy.

However, the corollary to the development of such standards should have been inspection and supervision of the societies by the Ministry to ensure that the standards were met. The absence of such inspection and supervision by the Ministry



permitted the mismanagement of Kim's case by the Society.

I am satisfied that what happened in Kim's case was so patently contrary to good practice and procedure in cases of child abuse that any supervision or inspection of the Society by any reasonably qualified social worker on behalf of the Ministry would have immediately revealed the failures and deficiencies of the Society.

None of the highly qualified persons who testified upon the Inquiry needed a written code of standards to enable him or her to express the opinion that what happened in Kim's case was not in keeping with normal, usual, reasonable and accepted standards of case management and decision making in cases of child abuse.

## PART V

### Records and Returns

During Kim's lifetime the Ministry maintained a Central Register or Registry of actual or suspected cases of abuse of children. In this portion of this Chapter I shall call it the "Registry."

I was unable to find any provision in the Act or the Regulations thereunder to authorize or govern the establishment and maintenance of the Registry or to require anyone to report any matter to the Registry.

I am satisfied that the Registry was conceived as a means of assisting the Ministry and the societies to cope with the problems of abuse of children. One thought at its inception in 1966 was that it would serve as a means of tracking or tracing persons who abuse children and move about, from hospital to hospital, from doctor to doctor, from town to town. That hope was not fulfilled. It was found that those who abuse children do not move about as much as had been believed.

I have already described how the Society filed with the Registry reports describing some of

the abuse which Kim suffered. In effect each report was merely read by someone who was not a qualified social worker and, if each of the boxes of the form had something in it, it was filed. Only if the Society had not filled in all the necessary boxes or if it had asked some specific question about the case or if it was apparent even to a clerical worker that some follow-up was expected would anything more have happened.

In Kim's instance the lethargy of those who maintained the Registry was exceptional. I have outlined their inactivity and lack of interest or concern.

The Registry was of no use to Kim. Although the Society reported her case to the Registry the Ministry did nothing to help her or to concern itself effectively with her case. The reports by the Society merely added to the statistics and accumulation of paper in the Registry and thus in the Ministry.

The Registry, like the matter of development of standards, has been considered in earlier reports commissioned by the Ministry. One such report was prepared in 1973 by Dr. Greenland and others. I have mentioned it earlier.

One chapter of that latter mentioned report is entitled "Legislation and the Central Register." That chapter is reproduced as Schedule 2-J to this Report. The testimony upon this Inquiry supports the general views expressed in that chapter.

The testimony upon the Inquiry was that any means of reporting, recording and analysing or assessing instances of abuse to children will require a common vocabulary and an agreement as to what constitutes abuse in its many forms. During all of the time relevant to this Inquiry there was no such common vocabulary or agreement. The result was that one society might determine that it should report an incident to the Registry whereas another society, dealing with an essentially identical incident, might determine that it need not report the incident to the Registry. Thus, Dr. Greenland's report in 1973, was another call to the Ministry to develop guidelines defining child abuse so that throughout Ontario there

might be a common standard used to determine what instances must be reported to the Registry.

It was not until 1978 that the Ministry, in legislation enacted as The Child Welfare Act, 1978, set forth a more comprehensive definition of child abuse. The nature of incidents which would require a report to a society was enlarged so as to include sexual molestation, malnutrition and mental ill-health of a degree that if not immediately remedied could seriously impair growth and development or result in permanent injury or death.

In the same legislation in 1978 the Ministry secured legislative authority for the maintenance of the Registry and for the requirement that societies report to the Registry all incidents of abuse of children verified by the societies.

Time alone will determine whether or not the Registry, now authorized or supported by legislation, will be any more effective than the useless appendage to the Ministry which was the Registry to which the reports in respect of abuse to Kim were filed.

The testimony upon the Inquiry was to the effect that, even prior to the enactment of The Child Welfare Act, 1978, the Ministry in 1978 introduced some new procedures for the handling of reports to the Registry.

It was abundantly clear that until those new procedures were employed there was no assurance that any employee or officer of the Ministry with any knowledge, skill or experience in social work, particularly in relation to child welfare and child abuse, would be aware that any report of abuse or suspected abuse had been filed with the Registry. Operation of the Registry was purely a clerical function. A clerk opened the envelope, looked at the report form and, for all practical purposes, if all necessary spaces were filled, acknowledged its receipt, typed a file card and assigned a number to it and then filed the report.

Kim's case was an example. Despite the reports to the Registry in September, 1975 and April, 1976, neither Mr. Charko nor Mr. Mainville, the two



Child Welfare Supervisors responsible for the supervision of the Society, were aware of her case. Mr. Macdonald, the Director, became aware of Kim's case only in March, 1977 when Dr. H. B. Cotnam, Chief Coroner of Ontario, wrote to advise him of it.

If Kim's was not a case which should have attracted attention from the Ministry when reported in September, 1975 and April, 1976, I cannot imagine what would be needed to attract the Ministry's attention.

In 1975 and 1976 the Registry, maintained by the Ministry since 1966 without specific legislative authority and without legislative support for any requirement for reporting to the Registry, was utterly useless. It was a facade, an outpost of the empire of some bureaucrat.

The Registry in 1975 and 1976 did Kim no good. It may even have worked against her. There was no testimony to support the latter possibility.

The new procedures employed by the Ministry in 1978, even before the enactment of The Child Welfare Act, 1978, required the clerk receiving reports to the Registry to make copies of each such report and, in addition to all of the earlier merely clerical tasks, to deliver a copy of each report to the Ministry's Child Welfare Supervisor responsible for the supervision of the society which filed the report. That would seem to ensure that someone with sufficient knowledge and experience to enable him or her to make a proper assessment or analysis of the report was aware of it. It would then be the responsibility of the Child Welfare Supervisor to do whatever was necessary. That might include a request for further information from the Society or a meeting with the Society to discuss the report and to furnish advice as indicated.

That new procedure, which hopefully continues, should ensure that knowledgeable and experienced persons in the Ministry are aware of and are dealing appropriately with every case of abuse or suspected abuse reported to the Registry.

I note that implementations of that procedure did not await and so did not require any



amendment of legislation or regulations. It might very well have been implemented long before if the Ministry had so wished.

There remains the problem of ensuring that all cases which should be reported to the Registry are reported. The legislative requirement is in existence. It is up to the Ministry, in fulfillment of its duty to supervise and inspect and advise the societies, to ensure that each society does properly report each incident which it should report.

In testimony upon the Inquiry I heard of a procedure devised by the Ministry in 1978 and which was expected to be operational in 1979. That procedure entails complete operational reviews by the Ministry of about ten societies in each year. Thus each society would undergo a thorough review each five years.

That too is an improvement. The Ministry was about to begin to fulfill part of its duty to supervise and inspect the societies. Hopefully that practice will continue and will not, in some reorganization or redeployment of staff, be discontinued or allowed to disappear without adequate replacement and without notice to anyone as had happened to the "readers."

One recommendation I propose to make is that the Minister should ensure, by his or her own inquiry within the Ministry, that these two procedures, or adequate replacements, are maintained even after the publicity of Kim's case and others like it has subsided. They should not be allowed to wither and disappear as the "readers" did in 1974 and 1975 so that there was a hiatus, to use Mr. Macdonald's word, until 1977 when the Ministry was able to get back to the level it had been at in 1974.

Quinquennial reviews are not sufficient. That may be frequent enough for complete and fully probing examinations of each society's organization, administration, personnel and procedures. But they should be supplemented by more frequent, if less thorough, inspections and reviews by the Child Welfare Supervisors of the Ministry.

Kim was born and she was abused often and she died as a result of abuse all within a period of less than twenty months. A review of the Society at five year intervals would not have helped her unless such a review happened to have occurred between June, 1975 and July, 1976.

The testimony was that children under the age of three years are the children most likely to be abused. Reviews at five years intervals would not be helpful to them.

Even annual reviews may not be sufficient, but, in my view, if the Ministry's personnel, at irregular times throughout the year, visit with each society and examine some aspects of its operations or administration, the likelihood of another case such as Kim's will be reduced. I am satisfied that the possibility of inspection by the Ministry will tend to ensure that the operations generally of each society are maintained at a satisfactory level. Mr. Patersen's testimony supports that view.

In all of this I am not suggesting anything in the nature of a witch-hunt, but that the more frequent inspections will really form a part of the Ministry's supervision of each society and enable to Ministry's personnel to advise the personnel of each society in respect of any problem which may arise either in any one case or in the general practice of the society.

In my view, at least until 1978, the Ministry did not make any meaningful use of the reports of abuse submitted to it by the societies. There may have been some information from those reports which provided some basis for statistical purposes, but, given the absence of a common definition of what was to be reported and given the absence of a common procedure as to when and how such reports were to be made, it would seem that statistics based thereon would be virtually of no value.

In February 1978 the Ministry convened the Child Abuse Task Force which in this portion of the Report I shall call simply the "Task Force."

The report of the Task Force was submitted to the Ministry by letter dated June 19, 1978. Dr. Ralph Garber was the chairman of the Task Force. For ease of reference I shall call the report of the Task Force the "Garber Report".

I have not examined the document establishing the Task Force, but the Garber Report states that:

"The task force's mandate was to examine:

- ° the response to the needs of abused children; the relationship of such children to their families; decision-making related to suitable alternative care, supervision of and support for the family
- ° the services provided by the Children's Aid Societies, demonstrated by how acute and chronic situations are defined and responded to."

For its purposes the Task Force defined child abuse as being physical abuse, gross neglect and sexual molestation. In the light of testimony upon this Inquiry that would appear to be a somewhat limited definition unless it was meant to give to the words "gross neglect" a broad meaning so that they would include, for example, emotional abuse and failure to thrive.

The Task Force wrote in the Garber Report:

"The task force recognizes that prevention is the first line of defence and is the most desirable solution."

That would appear to be in agreement with Dr. Bates' opinion as to the immediate importance of and need for the establishment and maintenance of programmes seeking to prevent abuse of children.

The Task Force regarded its responsibility as being "to look into what help could be provided after the abuse has occurred." It wrote that it had "a narrow focus and a broad concern."

In a portion of the Garber Report bearing the Caption "Dealing With the Problem" the Task Force wrote that its broad concern was in prevention. It



said its research reports required further study. That portion of the Garber Report concluded with the sentence:

"The Minister should consider establishing an advisory group on child abuse with a frame of reference reflective of the task force's broad concerns."

In the opening paragraph of the preface to the Garber Report, the Task Force wrote of public concern for children who are badly abused. The last sentence of the paragraph was:

"The government shared the communities' concern, since it had the legal responsibility to protect children whose lives are in jeopardy."

That concluding sentence does not appear to be in accord with the testimony of Mr. Macdonald who seemed to interpret The Child Welfare Act so that that legal responsibility lay upon the children's aid societies. Nor is that concluding sentence in accord with other statements in the Garber Report to the effect that the Ministry and the children's aid societies share responsibility for child protection.

In the latter area the Garber Report contained the statement that:

"The Ministry provides resources, monitors CAS activities, and sets standards and policy; the CAS provides direct service to children in need of protection."

The testimony upon the Inquiry causes me to doubt the validity of the statement that the Ministry monitored the activities of the children's aid societies unless the Task Force gave a very restricted meaning to the verb "monitor." I have similar doubt as to the validity of the statement that the Ministry set standards and policies. That doubt of mine is reinforced by the recommendations of the Task Force itself and the Ministry's responses thereto.

There were twelve members of the Task Force including Dr. Bates and Mrs. Farina who were witnesses upon the Inquiry. Mrs. Farina at the time



of her service on the Task Force was Associate Executive Director of the Ontario Association of Children's Aid Societies. In June, 1978 she was employed by the Child Welfare Branch of the Ministry as a Programme Development Specialist. In that capacity she was responsible for the co-ordination of the Ministry responses to the recommendations of the Task Force.

Copies of the Garber Report and the Ministry's response to the recommendations of the Task Force were produced as exhibits upon the Inquiry. The Ministry Response is dated September 8, 1978. Mrs. Farina testified at some length with reference to the two documents.

The Task Force conveniently grouped its recommendations with concise statements after relatively brief comments expressing the rationale therefor.

The Ministry responded to each of the recommendations separately and in great detail. For the purposes of this Report I have attempted to summarize each response as I understand it to be when supplemented or explained by oral testimony upon the Inquiry.

The first three recommendations followed a brief reference to the responsibilities, roles and relationships of the Ministry, the Ontario Association of Children's Aid Societies and the individual children's aid societies, with particular reference to section 6(2) of The Child Welfare Act which defines the purposes of the children's aid societies. There was no specific mention of section 2 of The Child Welfare Act which defines the duties of the Director appointed for the purposes of that statute.

Some of the expressions in the preamble to those recommendations appeared significant in the light of the proceedings of the Inquiry. The Garber Report used the letters CAS as an obvious abbreviation for Children's Aid Society or societies. The statements I refer to were:

"The CAS must be given a clearer mandate by the Ministry. Individual CASs need more

resources in order to play a more effective role in protecting children. They must strive to become visible, assertive, knowledgeable, resourceful and passionate advocates for children.

The task force finds both the Ministry of Community and Social Services and the Children's Aid Society remiss in setting standards and monitoring their performance. The mandate to the CAS has not been accompanied by resources, particularly the administrative, organizational and professional capabilities needed to carry it out."

and

"Clear, precise, consistent Ministry guidelines would help CASSs to respond to acute and critical situations in all these areas. Solicited submissions, and responses to the research questionnaire, contained repeated requests to the Ministry that it supply immediate additional and strengthened standards of service in all areas. The present O.A.C.A.S. guidelines were not disseminated, not uniformly available, and not widely utilized."

and

"The quality of protective services within the Province of Ontario varies markedly from CAS to CAS....The fact that the unevenness of service has persisted and is so pervasive is most disturbing."

The first three recommendations in the Garber Report were:

"That the Ministry provide standards of service for all CAS procedures and practices and monitor all CASSs to ensure the guidelines are followed.

That the Ministry prepare standards of service for complete implementation of

Section 6 of The Child Welfare Act which defines the purposes of the CAS.

That special attention be given to the involvement of CAS staff associations in planning and policy determination."

The Ministry's response was that the first recommendation was the most important of all of the recommendations "because it addresses what is expected of the [Children's Aid] Societies in the level of service, and what is expected of the Ministry in monitoring" and "brings into discussion the relationship between the Societies and the Ministry."

It would seem to me that the recommendation also addresses, to use the words of the Ministry's response, what is expected of the Ministry in performance of its statutory duty, imposed upon the Director under The Child Welfare Act, to advise and supervise children's aid societies. That duty is separate and distinct from the duty to inspect the operations and records of the children's aid societies which would encompass what is meant by "monitoring."

The Ministry then went on to say that the provision of standards would require programmes of training to interpret the standards and to give guidance in their application. Mrs. Farina expanded upon this to say that guidelines written by experts would be of value only if those who were to use them, presumably the staff of the children's aid societies, understood them. Assurance of that understanding could be obtained only by adequate training of the children's aid societies' staff.

In September, 1978 those training programmes had not been begun, but the staff of the Ministry was "talking" and "planning." From the testimony upon the Inquiry such were not unusual activities in the Ministry.

Mrs. Farina went on to say that the first recommendation in the Garber Report was an expression of concern about the absence of uniformity of standards among the children's aid societies.

The Ministry's response employs many of the words and phrases used by Mr. Macdonald in his testimony upon the Inquiry and which I have mentioned elsewhere.

It spoke of the Ministry being "committed to developing standards of service in all areas of children's services" and of this being "a top priority of the Standards and Information Branch." It is silent as to when the commitment was made and how and to whom it was made. It is silent as to when the Standards and Information Branch was formed and given responsibility for the task. I have examined Organization Charts of the Ministry for July, 1977 and May, 1978 and I see no such branch although in July, 1977 there was a box entitled "Child Care Standards" and in May, 1978 Mrs. Farina's name appeared in a box entitled "Standards Development."

In her testimony upon the Inquiry Mrs. Farina spoke of the Standards and Information Branch as having been formed as a branch of the Children's Services Division formed early in 1973. The organization charts do not bear that out, but that could be merely a question of terminology.

The Ministry's response spoke of one set of standards having been completed in September, 1978 and others being "in the process of development." It is silent as to when the "process of development" of those others began or the stage at which it then was.

It spoke of this being a "massive undertaking" and of its being "anticipated" that all would be "ready for discussion early in 1979." It is silent as to who would be involved in any such discussion.

It then became somewhat defensive of the Ministry's past record and said:

"We have not been totally without standards for the work of CAS's, and particularly for cases of child abuse."

It mentioned that the Ministry "worked co-operatively with your association," which I presume to mean the Ontario Association of Children's Aid Societies, in producing guidelines for Handling Cases



of Child Abuse published by the Association in July, 1976.

The paucity of the Ministry's effort is best illustrated by the fact that the next sentence, immediately after the reference to July, 1976, mentioned that "a directive on child abuse cases" was sent to the children's aid societies in April, 1978. There is no mention of any specific activity in the intervening twenty months.

It did speak of "many directives and memoranda" dealing with specific aspects of child abuse cases having been sent "over the past few years." These were, in September, 1978, "currently being assembled in a Program Manual which should be completed by November [1978]." Opposed to that vague statement is Mr. Lovatt's precise testimony which was not challenged upon the Inquiry.

Mr. Lovatt was asked the following questions and responded as follows:

"Q. Now, what sort of guidelines up to that point did the Society have on the question of abuse?

A. None. Nothing had been developed. Each case was dealt with by the staff dealing with the case.

Q. Was there no guidelines from anywhere on the question of abuse?

A. No.

Q. From the Ministry?

A. No, not at that point.

Q. From the O.A.C.A.S.?

A. No, not at that point."

In the exchange "that point" was at a time after Kim had died and her parents had been charged with manslaughter.

Mr. Lovatt was asked to review the various directives and memoranda from the Ministry to the children's aid societies and to indicate the number which dealt with financial matters and the number which dealt with child abuse. His reply can best be represented in tabular form which I have prepared from the index on which he based his testimony.

The table includes unnumbered memoranda which he did not include in his oral testimony.

<u>Year</u>	<u>Total Number</u>	<u>Number re Financial</u>	<u>Number re Abuse</u>	<u>Number re Other</u>
1965	21	5	0	16
1966	72	20	1	51
1967	55	16	2	37
1968	38	14	0	24
1969	37	10	0	27
1970	30	14	1	15
1971	33	9	0	24
1972	38	13	0	25
1973	31	9	0	22
1974	22	5	0	17
1975	42	15	1	26
1976	42	15	6	21
1977	<u>45</u>	<u>13</u>	<u>7</u>	<u>25</u>
TOTALS	506	158	18	330

It is apparent that in 1976 and 1977 there was a marked increase in the number of memoranda relating to child abuse.

The index to which Mr. Lovatt referred was forwarded by the Minister over the signature of Mr. Macdonald as Director of Child Welfare. Even in that memorandum dated February 15, 1978, there were the so familiar words "...we are in the process of reviewing and updating these collections [of memoranda]. When this review and revision has been completed we will advise you...".

One is left to wonder if that process of review and updating in February, 1978 was the same as that mentioned in this September, 1978 response to the Garber Report whereby the Ministry declared that

directives and policy statements were "currently being assembled in a Program Manual which should be completed by November."

Mr. Lovatt said he relied on the Ministry for leadership in new matters with which children's aid societies were being confronted or of which they should be aware.

Another paragraph of the Ministry's response begins with the following sentences:

"In response to the need to assist specifically in dealing with child abuse, the Ministry arranged with Ross Dawson of the Algoma CAS, to produce a set of guidelines for the management of child abuse cases. We are impressed with the quality of these guidelines and are presently deciding on how best to introduce them."

Mrs. Farina in her testimony spoke of the Guidelines for Practice and Procedure in Handling Cases of Child Abuse published by the Ontario Association of Children's Aid Societies in July, 1976. She said "Mr. Ross Dawson was actually the author of the case handling part of these guidelines," which, she said, had been "endorsed by the Ministry."

At some time after July, 1976 the Ministry retained Mr. Dawson to produce a set of guidelines.

Its statement of being "impressed" by Mr. Dawson's guidelines is somewhat after the fact.

My puzzlement is not allayed by reading the 1976 publication the introduction to which contains the following three paragraphs:

"Guidelines for CAS practice and procedures in the handling of child abuse cases are long overdue. Lack of a common understanding in definition and in identification, and disparities in case handling, make it difficult to set out definitive guidelines at this time.

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The Ontario Association of Children's Aid Societies requests that practitioners review the contents of this document, test the guidelines offered, note what seems practicable and what not, and to add (there are some obvious gaps), delete and otherwise modify. After a few months of testing we will request that you inform us of your experience. In about a year's time then, with your help, it may be possible to produce a set of guidelines for practice and procedure in child abuse that will be relevant and practical for all Children's Aid Societies in Ontario, and that will give some assurance of consistency in practice across the province.

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It is recognized that throughout Ontario there are regional differences which complicate efforts to standarize any service. The fiscal problems of the societies confound the problem, most notably in the area of preventive services, and local areas vary in their tolerance of child abuse. In spite of these difficulties, however, we still need to establish quality guidelines and to encourage all CASS to aim for the optimum level of service."

That is a clear statement of a long standing need for guidelines and of the difficulties flowing from lack of uniformity. It also is a recognition of the need for the testing of the guidelines and for amendment as may be indicated after testing. It is a statement as to the fiscal problems faced by the children's aid societies "in the area of preventive service." These were not phenomena observed for the first time in 1976 or in 1978.

Two years later the Ministry was still considering how to introduce them and how to train personnel to apply them and the Garber Report made mention of the lack of uniformity.



The reference to the Ministry "presently deciding on how best to introduce them" is puzzling to me. They were introduced when published and distributed in 1976. The Ministry's response makes sense only if the word "introduce" is replaced by "enforce" or "apply" or a synonym thereof or if one is speaking only of the revision made in 1978.

Mrs. Farina in her testimony said that the Task Force

"discovered that the children's aid societies looked to the Ministry to establish standards. They seemed to feel that if the Ministry did it the standards would have more authority."

Mr. Lovatt's testimony that he looked at the Ministry for leadership was to a similar effect.

I would hardly think that the Task Force discovered that situation if one uses the word "discover" in the sense of finding it for the first time.

The Ministry's response went on to speak of another committee's efforts to seek to define "neglect." That committee had "developed" a document and the Ministry was "hoping" it would continue its work.

The response spoke also of the Ministry's task with reference to "revised legislation" I presume that to be a reference to what was then Bill 114 and which became The Child Welfare Act, 1978. That included preparation of regulations for reporting to the Central Registry of Child Abuse and the use of that Registry.

The response spoke of special programmes to enable children's aid societies to employ additional temporary staff to assist in the management of child abuse cases.

The second part of the Ministry's response to the first recommendation in the Garber Report opened with another fine sounding statement that the Ministry "see[s] training programs as a vital part of standard development." It then sets out the

Ministry's "wish to begin staff training this year" and the belief that that can be done, even though "longer-term standards papers will not be finalized until later," because "there are areas that are basic and will remain basic to any standards." It points out that availability of funds will affect the pace of any such programme.

That reference to the presence of basic areas in any standards begs the question. If training was seen by the Ministry "as a vital part of standards developments" why was any training programme still only in the design stage more than two years after the Ontario Association of Children's Aid Societies published the initial set of guidelines in July, 1976. Even in 1976 the guidelines then published were stated to be "long overdue" and it was the Ontario Association of Children's Aid Societies rather than the Ministry which effected the publication.

The defensive posture of the Ministry's response continued with its reference to the Child Abuse Programme. That programme was said to have been "involved intensively in different types of training and education programs related to child abuse" over the preceding year. One must wonder at the use of the adverb "intensively" because such training went on in only fifteen communities throughout Ontario. That training was said to have been "accessible to personnel in 25 children's aid societies" and to have been well-received. There is no indication of how many persons attended and from how many children's aid societies they came. There is no indication of the nature of the training, except that it was "inter-disciplinary."

The paragraph concluded with another promising sentence with a powerful word indicating aggressive forward action. It was:

"The second stage of this thrust is a program designed for the treatment aspects of child abuse cases."

That portion of the Ministry's response continued with reference to efforts to introduce child abuse training into the curriculae of various educational institutions. It concluded with another

statement of promise, effort and reorganization by the Ministry as follows:

"A less direct, but nevertheless effective, educational componenet for the Societies is inherent in the plan we are working on to help us deal more effectively with difficult individual cases. This will be announced in the next two months as part of our reorganization plans."

As to monitoring by the Ministry, the Ministry's response was that that raised complex issues as to the relationship between the Ministry and the children's aid societies. "The Ministry accept[ed] the need to take a stronger role," but it seemed to query how that might be achieved given the fact that the children's aid societies were separate corporations and "an employer-employee relationship [was] inappropriate."

The written response said that the Ministry recognized the need for clarification of expectations and relationships of the Ministry and the children's aid societies.

Mrs. Farina testified that the Ministry did not wish to undertake to monitor every case handled by the children's aid societies. She spoke, as did the written response by the Ministry, of a review or re-studying of the role of the Child Welfare Field Consultants to see if they might have more time to work directly with the children's aid societies.

The written response and Mrs. Farina said that the Ministry was planning to conduct "operational reviews of all [children's aid societies]," with a view to ten being reviewed each year until, at the end of the fifth year, all will have undergone such a review.

As I heard the testimony I sensed that it was the Ministry's intention that the programme of operational reviews would continue even after all of the children's aid societies had been reviewed. Upon reading the Ministry's response and Mrs. Farina's testimony as transcribed I do not find a clear statement to that effect although Mrs. Farina presumed it. It would seem to me that only an on-going programme

of such reviews would produce any lasting and long-term benefits.

The exact nature of such reviews was not set forth. They apparently will involve the staff and boards of directors of the local children's aid societies being reviewed.

Both the written response and Mrs. Farina spoke of the Ministry's wish to encourage the children's aid societies to develop their own systems of self-monitoring so as to enable them to recognize their weaknesses and to seek appropriate assistance.

In addition, the Ministry was applying further financial audits to the children's aid societies.

Like the first recommendation in the Garber Report the second recommendation called upon the Ministry to prepare standards. This time the standards were to be in relation to services to achieve "complete implementation of section 6 of the Child Welfare Act."

The Ministry's response was that this recommendation "demands a comprehensive review of the boundaries of the programs of the Societies and the requirements of the Ministry."

The Ministry again recognized the need for clarification of the relationship of the Ministry and the children's aid societies. The Ministry recognized that it was difficult for the children's aid societies to know exactly what was expected of them in certain areas and how they fund their actions.

One such area of particular difficulty was contained in section 6(2)(c) of The Child Welfare Act. That paragraph provides that one of the purposes of every children's aid society is to:

"provid[e] guidance, counselling and other services to families for protecting children or for the prevention of circumstances requiring the protection of children."

The Ministry's response stated that:



"the availability of funding creates difficulties in implementation."

Mrs. Farina added a further dimension when she spoke of the absence of a definition of "prevention" and of efforts to achieve a clearer definition of "expectations" and said this was the only part of section 6 which created problems for the children's aid societies.

Again the written response stated that the Ministry over several years had "issued a number of directives, memoranda and policy statements which clarify many expectations in regard to the mandated responsibilities of the Societies." These were to be assembled in the Program Manual which Mrs. Farina said the Ministry was "developing."

The written response and Mrs. Farina both mentioned that papers are being "developed" to examine the role of children's aid societies generally and the role of the Ministry in the provision of preventive services. When that latter is complete and after consultation with the children's aid societies and other the Ministry

"will make a decision about what kinds of preventive services it is ready to pay for, and also make the decision on who, what body should be carrying out those particular services."

Mrs. Farina suggested that that will be a difficult decision for the Ministry and will probably be achieved with regard to the needs of the local communities rather than by "an umbrella kind of endorsement of one service."

The third recommendations in the Garber Report was that special attention be given to the involvement of children's aid societies staff associations in planning and policy determinations.

Mrs. Farina said that recommendation resulted from the quality of the submissions made by staff associations to the Task Force. She felt it was a practice already accepted by the Ministry.

The Ministry's written response is to the same effect.

The Task Force then wrote in the Garber Report that evaluation comparisons of children's aid societies were impossible because records kept by children's aid societies were "disparate, incomplete and unique." They also wrote of "information gaps and time lapses in the reports of child abuse to the Central Registry" which diminished the value of that registry.

The fourth recommendation in the Garber Report was:

"That guidelines for inclusion of data and diagnosis emphasize uniformity of reporting. Staff support at the Ministry should be made available to assure that the system now being formulated can be made operational and guidelines for record keeping by local CASS be developed and standardized across the province".

The Ministry in its response and Mrs. Farina in her testimony pointed out what is obvious from the Garber Report. The Task Force was concerned with two forms of reporting. The one form related to the preparation of material for inclusion in the files maintained locally by the children's aid societies. The other was the form of reporting to the Central Registry of Child Abuse. There was a great diversity in style and content of reports.

Again the Ministry in its response wrote of a system "currently being developed for all children's services by the Standards and Information Branch" to "ensure uniformity and completeness of case recording."

That appears to me to be another instance in which the Ministry speaks of matters beyond that of child abuse. It is an approach to "all children's services" which extend far beyond the direct concerns of this Inquiry. It is an ambitious undertaking.

As I recall the testimony relating to the Management Information Service, another ambitious project of the Ministry, that project foundered

because it was so ambitious and was frustrated by the seemingly endless reorganization and restructuring of the Ministry. Perhaps less ambitious proposals related to specific and relatively confined concerns would be more effective. If desired a number of these less complex undertakings could be grouped in some way, but there would always be a solid base for each of the components in the event the grouping was not established or maintained.

In a Ministry so subject to change as demonstrated by the testimony upon the Inquiry it would seem only reasonable that each component be dealt with separately lest at some time it be moved within the Ministry or even assigned elsewhere.

The Ministry's response acknowledged that the discrepancies in the reports to the Central Registry of Child Abuse arose, in part, because of

"the lack of a clear definition of what is considered a reportable situation, and lack of clear guidelines for use of the Registry."

The Ministry had been aware of "these conditions." It did not state the length of time during which it had been so aware. Mrs. Farina's testimony was of no help in fixing that time.

The Ministry in its response said it had "taken measures to correct [these conditions] through its revised legislation." Again I presume that is a reference to Bill 114, later enacted as The Child Welfare Act, 1978.

The Ministry's position was that the new legislation would provide "a legislative base governing abuse reporting as well as the Central Registry." The Ministry relied particularly upon section 47 of Bill 114, which contained a definition of "abuse," and section 51, which related to the Central Registry and its use. The Ministry recognized that section 14 was "general in nature." It said its "guidelines" would be "much more specific in order to give clear direction to the [Children's Aid] Societies."

That latter statement prompts the rhetorical questions "If the definition of abuse remains 'general in nature' why did the Ministry wait until the new legislation was drafted to prepare 'much more specific' guidelines? How much more of a legislative base was the proposed new legislation, as it stood in September 1978, than The Child Welfare Act as it was in 1976?"

It would seem that the guidelines to be issued by the Ministry were to go beyond the statutory definition of abuse. The same could have been done in 1976 or earlier.

The Ministry stressed the difficulty of defining "neglect" and determining when neglect should be reportable to the Central Registry. It spoke of reporting forms "being developed" along with "a complete set of guidelines that make the meaning clear and which will be helpful" to the children's aid societies and others who are required to report to them upon cases of abused children.

Mrs. Farina testified to much the same effect. She said that the Central Registry of Child Abuse as it had been was not "a useful Registry," but the Task Force felt that it could be useful and the Ministry was seeking to accomplish that.

At the time of the Ministry's response to the Garber Report, Bill 114 had received second reading. To that time, in section 44 on first reading and in section 47 on second reading, it defined "abuse" as meaning "a condition of physical harm or neglect or sexual molestation." On third reading the definition in section 47 was amended by replacing the word "neglect" with the words:

"malnutrition or mental ill-health of a degree that if not immediately remedied could seriously impair growth and development or result in permanent injury or death."

Mrs. Farina in her testimony said there were considerable differences of opinion as to what constitutes "neglect." I infer that the eventual form of the legislation as enacted reflects a



resolution of those differences of opinion which Mrs. Farina mentioned.

Bill 114, in section 46 on first reading, section 51 on second reading and section 52 on third reading, contained provisions relating to a register of reports of abuse of children. Substantial amendments were made to these provisions as the Bill proceeded through the legislative process.

The provisions relating to that register as enacted in The Child Welfare Act, 1978 are in section 52. Every children's aid society which receives information concerning the abuse of a child must forthwith report thereon to an employee of the Ministry designated as the Director for the purposes of the section. That Director must maintain a register of such reports. Access to or disclosure of the information in the register is restricted. Use of the register as evidence is restricted. The officers and employees of any children's aid society making or failing to make any such report are protected from civil liability if they acted in good faith.

The Regulations made under The Child Welfare Act, 1978 are contained in Ontario Regulations 388/79 and 389/79 and are supplemented by the Regulations made under The Provincial Courts Act and The Judicature Act.

Part VI of Regulation 388/79 is entitled "Child Abuse." It contains sections 26 to 28, inclusive.

Section 26 defines the information which the Director who maintains the register may furnish to a children's aid society which may inquire under section 8(1) of Regulation 389/79. That latter provision requires any children's aid society which receives information under section 49 of The Child Welfare Act, 1978 to inquire if any person referred to in the information has been previously identified in the register.

Section 27 requires any report, whether initial or supplementary, to the Director maintaining the register to be in a prescribed form. It also enables the Director to extend the time prescribed by

section 8 of Regulation 389/79 within which any such report may be made. Section 8 of Reg. 389/79 requires the initial report to be made within 14 days after the children's aid society has verified the information in the manner determined by the Director. If the case is not closed by the children's aid society a supplemental report is required within four months of the making of the initial report, and thereafter annually, on the anniversary of the initial report, until the case is closed. The prescribed forms are comprehensive when compared with the form used during Kim's lifetime.

Section 28 requires that information reported to the register be recorded in a prescribed form and be maintained for a prescribed period of time.

The Regulations made under The Child Welfare Act in force during Kim's lifetime contained no provisions corresponding to Part VI of Regulation 388/79 or section 8 of Regulation 389/79 nor did they prescribe the form of the report to the then Central Registry of Child Abuse. The Child Welfare Act in force in Kim's lifetime contained no provision relating to the Central Registry of Child Abuse.

So that the readers of the report may observe the changes, sections 47, 48, 49 and 52 of The Child Welfare Act, 1978 and Section 26, 27, and 28 of Regulation 388/79 and section 8 of Regulation 389/79 together with the forms thereby prescribed are reproduced in Schedule 2-P to the report. Regulations 388/79 and 389/79 came into force on June 15, 1979, the day on which The Child Welfare Act, 1978 came into force. The form of report to the Central Registry of Child Abuse in use in 1975 is reproduced as part of Schedule 2-R to the Report.

After that above-mentioned recommendation in the Garber Report the Task Force expressed its hope that that recommendation would be implemented within a year. I have not inquired as to whether or not that has been accomplished. My examination of the Statutes of Ontario and the Regulations made thereunder as recently as November 1981 reveals no relevant amendment to The Child Welfare Act, 1978 or Regulations 388/79 and 389/79. It would seem therefor that the hope of the Task Force was not

fulfilled. However, the Ministry may have accomplished it in some other form. I did not deem it proper for me to inquire of the Ministry. The Minister may wish to make his own inquiries of the staff to satisfy himself.

The Garber Report then set forth the desire of the Task Force that, upon achievement of that preceding recommendation, a process for the accreditation of children's aid societies be initiated within 3 years, completed within five years for all children's aid societies and followed by re-accreditation at intervals of five years.

That desire was expressed in the next recommendation of the Task Force as follows:

"That an accreditation process for children's aid societies be initiated by the Ministry of Community and Social Services. Regulation concerning accreditation should be incorporated into The Child Welfare Act."

That recommendation was not acceptable to the Ministry which, in its response, as elaborated upon by Mrs. Farina in her testimony, expressed its preference for other procedures.

The Ministry's response and Mrs. Farina spoke of the Task Force's concern about the quality or level of service provided by children's aid societies.

The Ministry's response mentioned the Task Force's concern that the quality of service varied across the province. It went on to state that the recommendation was intended to assure a uniformity of standards of service. It said that the Task Force desired "a more sharply defined and visible system of public accountability on the part of the [children's aid] societies." I did not notice any such comment in the Garber Report or Mrs. Farina's testimony, unless one were to infer it from the many references to the desired participation of other professions and institutions with the children's aid societies.

The Ministry in its response acknowledged "the need for a system to assure that standards of



service are met." The Ministry mentioned the concern of some boards of directors of children's aid societies that they were unable to know the levels of service in their local societies and how those levels compared with the levels of other societies. Mrs. Farina mentioned that, but added that some local directors of the societies, the most senior staff persons, expressed similar concerns. She said it was difficult for such boards of directors and local directors to effect the necessary monitoring and they felt a system of accreditation would assist them.

Systems of accreditation exist in relation to other institutions, such as hospitals. In her testimony upon the Inquiry, Mrs. Wood, a member of the Board of Directors of the Children's Aid Society, spoke of a somewhat similar review of the Society which might have been conducted. That review would not have been to achieve accreditation in the sense of its being a prerequisite to continued operation, but it would have given the Board of Directors, Mr. Lovatt and the entire staff and membership of the Society some indication of the strengths and weaknesses of the Society.

The Ministry and Mrs. Farina acknowledged the validity of the concern of the local boards of directors in respect of standards of service and the performance of the local children's aid societies. They felt however that a system of accreditation was not the best solution. They argued that the accreditation reviews were "periodic spot checks" and did not take "responsibility for the overall development of the agency." They spoke of more bureaucracy and more cost.

Mrs. Farina described the potential costs as being "enormous," but spoke only of \$150,000 annually "only for the study part of it." She did not explain what else would be involved. On the basis of fifty children's aid societies that is only \$3,000 for each, which seems to be a small sum in relation to the overall budgets of the societies.

The Ministry and Mrs. Farina recommended a system of "operational reviews and other kinds of checking and monitoring" as being more effective than accreditation because it helps each society to monitor itself and provides a monitoring by the Ministry.



Self monitoring was seen as enabling each society to consider local community factors and services affecting its operations.

The Ministry's response said these operational reviews would be

"considerably more meaningful in that inherent in them are the implementation aspects of standard setting including programs of staff development, and assistance to the societies where this is necessary."

Mrs. Farina made similar comments in her testimony.

I am unable to accept the validity of that response and those comments. The responsibility and duty of the Ministry under The Child Welfare Act to "advise and supervise" and to "inspect" the local societies are not increased because the reviews are conducted by the Ministry; nor are they diminished because the reviews are part of an accreditation process. No matter how any deficiency within a local society is discovered the Ministry would still have its statutory duty which, in my view, encompasses "assistance to the Societies where this is necessary" to use the words of the Ministry's response.

The Ministry's response spoke of standards being developed in stages and that the societies would be helped to examine their practices in relation to those standards and to maintain continuous self assessment.

The Ministry and Mrs. Farina spoke of the local boards of directors of the societies being aware of the results of operational and other reviews.

Again the validity of that as a basis for rejecting a system of accreditation escapes me. The Ministry remains bound to help societies. The local board of directors will be aware of the results of the accreditation review and the Ministry, as part of its duty to advise, remains bound to inform the local board of whatever comes to the attention of the Ministry as a result of any review of the local society it may care to make.

It would seem to me that all of the Ministry's reaction to the Task Force's recommendations that "an accreditation process" be initiated is really an argument of semantics. The operational reviews which the Ministry proposed, if appropriately directed and regulated, and if conducted by sufficient personnel qualified in all aspects of the operation and administration of children's aid societies, would be as effective as a process of accreditation. Whether it be to determine whether a society may be accredited or to determine whether the society is adequately fulfilling its duties and obligations, standards will have to be set and the performance of the society and its personnel will have to be measured against those standards.

Similarly, even if the society is to monitor or assess itself, standards will have to be set and published. Without standards the local society has no way of knowing how well or how poorly it has performed. Indeed, without standards no one has that ability.

The sixth recommendation of the Task Force in the Garber Report was:

"That the guidelines include procedures for rotation out of child abuse caseloads, staff assignments, and special leave for study."

The Task Force wrote that supervisors should be assigned some cases of child abuse so as to "remain in touch with the experiences of front line services." It wrote of "high burnout" of workers assigned exclusively to cases of child abuse and gross neglect. Such cases are the most difficult and draining.

The Ministry's response and Mrs. Farina's testimony support the Task Force's opinion, but cite the lack of funds to implement it fully. Mrs. Farina spoke of the Ministry being unable to "[send] people away for extended periods of time," but recommending short leaves for study.

The Ministry said "plans for such rotation will be included in the standards being developed."

The Ministry's response to this sixth recommendation concluded with another of the statements of the type I have observed elsewhere. I do not doubt the good intentions of the Ministry when it issues such a statement, but I do doubt the ability of anyone in or out of the Ministry to say, with precision and certainty what it means or what it was intended to mean. The author of the statement may interpret it one way; I or any other person reading it may give it a quite different meaning.

The statement is short and is as follows:

"The Ministry has made a committment (sic) to staff training and development programs as a means providing stimulation to staff."

It simply begs any number of questions. When and how was the commitment made? To whom was it made? When and how will it be implemented? Has the Ministry the ability to fulfill its commitment? What will it require of others including the local children's aid societies?

The seventh recommendation in the Garber Report was

"That the Ministry prepare guidelines for the participation of multi-disciplinary teams, police, physicians, legal counsel, and educators."

That was followed by a section entitled "Multi-disciplinary coordination" which contained four more recommendations. There is a relationship among the five recommendations.

The Task Force wrote of the many persons in many professions or callings who might be the first to observe a particular case of child abuse and to report it to a children's aid society which must then protect or assist the child. They wrote of the many roots of the problem and the inability of any one agency to provide all of the services which may be required. Thus the children's aid society must draw upon other resources in the community for assistance. Mrs. Farina said this was particularly so in relation to the decisions which must be made in each case.

Multi-disciplinary child abuse teams had worked well in other jurisdictions and in those communities in Ontario in which they existed. Less than one third of the children's aid societies in Ontario participated in such teams.

The Task Force concluded its introductory comments with the sentence,

"We support many types of multi-disciplinary consultation and cooperation in all localities, urging fiscal and consultation supports."

The Ministry's response to the seventh recommendation in the Garber Report was positive. It wrote with some specific detail of steps taken by the Child Abuse Programme to further a multi-disciplinary approach to the problem of child abuse. Mrs. Farina said that had been proceeding for "about two years" prior to the Ministry's response.

However the Ministry stressed that inter-disciplinary teams function differently in various communities. It felt it would be almost impossible to develop guidelines for participation in the operations of such teams, but it did recognize that guidelines outlining the roles of such teams would be helpful. The Child Abuse Programme has "developed a paper which outlines the way in which teams are used." Unfortunately the paragraph concluded with the promise only to "get it to you [children's aid societies] as soon as possible."

The Child Abuse Programme offered its staff for consultation.

There is an Inter-Ministerial Committee on Children's Services to serve as "the mechanism for handling child abuse matters that concern more than one Ministry."

The eighth recommendation in the Garber Report was:

"That Children's Aid Societies be required to initiate the formation of multi-disciplinary teams locally. The functions of these teams should be as follows:



- ° to provide consultation, coordination and cooperation, and community planning
- ° to assist in decision-making, not necessarily as a group but as informed individuals
- ° to be involved in immediate decision-making and critical long-term decision-making.

That recommendation was related to the preceding one.

The Ministry's response, as it was to the preceding recommendation, was sympathetic and supportive. It agreed that such an approach was desirable, but it pointed out that problems might arise. Neither the Ministry nor the children's aid societies have authority to force others to participate in the operations of such teams. The Ministry offered its support and assistance to any local effort to establish such a team including, if necessary, approaches, through the Inter-Ministerial Committee on Children's Services, to other Ministries of the Government which might have jurisdiction or authority in certain fields.

Mrs. Farina noted that the community child abuse team established in Sarnia was one of the first in Ontario.

The ninth recommendation of the Task Force was:

"That although multi-disciplinary teams should assist the CAS, the CAS must continue to assume the ultimate responsibility for child protection."

That recommendation is related to the preceding two recommendations.

The Ministry's response was favourable. It regarded the recommendation as recognizing that such a multi-disciplinary team can lose its effectiveness if ultimate responsibility for child protection is not clearly established. The Ministry said the responsibility of children's aid societies for child

protection is established in The Child Welfare Act and is stressed in the Ministry's materials on staff training and development programmes and multi-disciplinary teams and in the guidelines for the handling of child abuse cases.

Mrs. Farina elaborated upon the Ministry's response to note that such inter-disciplinary teams are advisory only.

The tenth recommendation of the Task Force was an extension or refinement of those which immediately preceded it. It was preceded by the caption "The CAS and the Police" under which the Task Force expressed some opinions and comments.

The Task Force wrote that both the children's aid societies and the police have a mandate to protect children. Each has skills which complement the other's skills. The police have investigatory skills. The children's aid societies have assessment and treatment skills.

Investigation of abuse situations was said, by the Task Force, to be "problematic" for the children's aid society. I am uncertain of the sense in which the Task Force used the word "problematic," but I infer it was intended to convey the belief of the Task Force that problems might arise for a children's aid society if it investigated abuse situations.

The Garber Report set forth a number of examples of such problems as follows:

- "° there is frequent reluctance on the part of the police and the Crown Attorney to become involved, unless they are certain they can develop proof for a court case
- ° collection of concrete evidence by CAS workers for Court is difficult and time-consuming
- ° the CAS lacks resources and competence to investigate and assess situations as thoroughly as it would like

- ° there exists a lack of consistent Ministry guidelines for abuse investigation and disposition
- ° there is a lack of knowledge on the part of police as to their role and the scope of their involvement
- ° there is often confusion of function when the CAS worker is protecting the child and helping the family on the one hand, and investigating the family for causative behaviour on the other."

The Task Force felt that such problems arose "mainly from mutual inability of the CAS and police to understand their respective roles and responsibilities."

The Task Force felt that many instances of neglect and mild abuse can be handled by social workers without police intervention. However procedures for full utilization of police skills should be established. Police assistance should not be sought only in crisis situations. Regular prosecution process should follow if there is strong evidence of abuse or neglect.

The Task Force did not specifically consider any of the events of or about Kim's case. However, in this area of the Garber Report they wrote:

"The task force was concerned about the role and responsibility of coroners when there has been a child abuse death. Where there is a high index of suspicion it was recommended that an inquest should be held. Some members of the task force believed inquests should be held in all child abuse deaths if the case is not otherwise dealt with by a Court. The protection of other children in a family in which a child abuse death has occurred is the professional responsibility of a coroner and the legal responsibility of the local CAS."

That paragraph is a strong reminder of the events described in Chapter XI of this Report, "Postlude to Kim's death on August 11, 1976."

The tenth recommendation in the Garber Report was,

"That joint police and CAS participation in investigative procedures be explored more fully."

The Ministry's response was an expression of its agreement with the recommendation and of its understanding of the dilemma for the children's aid society worker who must investigate the allegation of child abuse and concurrently establish a relationship with the family which will be conducive to future work. However the Ministry also suggested some problems might be met. It felt that successful implementation of the recommendation would depend upon the local situation. Mrs. Farina added that personalities are factors in the establishment and maintenance of co-operation. The Ministry offered support and consultation and, if necessary, referral to any other appropriate Ministry.

It stated that the guidelines on handling cases of child abuse contain a section on the involvement of police which might form the basis for local discussion. I have read that section in the copy of the guidelines prepared in 1976 and produced upon the Inquiry. That section is reproduced as Schedule 3-A to this Report. It is rather terse. As might be expected by reason of its source and the persons for whom it was primarily intended, it is written from the perspective of the children's aid societies. It does not indicate what each might expect from the other and that the hope is for a partnership approach to child abuse matters.

In light of the comments upon the dilemma of the social worker who seeks to establish a relationship to enable future work with the family, the paragraph reminding the reader of the possibility that charges may be laid if the police are involved might almost be construed to be a caution against seeking the involvement of the police.



The Ministry's response and Mrs. Farina each mentioned some pilot projects undertaken in some communities whereby the children's aid societies and police are routinely involved jointly in the initial stage. The Ministry proposed to advise the children's aid societies of the results of such projects.

It is of interest to note that, apparently almost instinctively, the Sarnia Police Force requested the assistance of the Society in June, 1975 and recognized the statutory obligation cast upon the Society. Unfortunately the Sarnia Police Force did not fully appreciate its own responsibilities at the time. The establishment of a routine procedure as suggested by the Task Force may have helped Kim in June, 1975 and thereafter.

Another specific time when a routine procedure of co-operation between the Society and the Sarnia Police Force might have helped Kim was in February, 1976 when Police Constable Wyville expressed his concern for Kim's safety if she were returned to her parents. It may be that that was an instance of what Mrs. Farina meant when she spoke of the effect of the personalities of the participants in any venture upon the success of the venture.

The next caption in the Garber Report is "The CAS and the Medical Profession".

In the paragraphs preceding the next recommendation the Task Force writes of the important role that the medical profession can play in the detection and investigation of situations of possible danger to children and of cases of abuse, neglect or sexual molestation. Members of the medical profession would be expected to join the interdisciplinary child abuse team.

The Garber Report contains suggestions as to particular steps which may and should be taken to obtain the support and confidence of the medical profession, not only physicians, but also nurses, hospital staff and public health bodies.

One such suggestion was that the Ministry seek the direct assistance of the Ministry of Health and the various professional associations to alert

members of the medical profession to their responsibilities.

The Task Force's eleventh recommendation was:

"That hospital accreditation procedures should include standards for reporting child abuse, and for participation on multi-disciplinary child abuse teams."

The Ministry's response to that recommendation was favourable.

Mrs. Farina in her testimony elaborated upon the relevant statements in the Garber Report and the Ministry's responses which emphasized the difficult position in which hospital employees might find themselves. In some instances such employees identified symptoms of child abuse, but were prevented from reporting to a children's aid society or Crown Attorney because of orders or regulations given or imposed by doctors or hospital administrators.

Some of the direct testimony upon the Inquiry verged upon that type of situation. Mrs. Hewitt particularly spoke of the traditional training of nurses to report to doctors and to nursing supervisors and to follow the instructions that may be given by doctors and nursing supervisors. She said nurses relied upon their supervisors and the doctors to do whatever was required. Sister Rita spoke of administrative procedures within the hospital which would authorize only certain employees to report any incident of abuse. Dr. Singh in his report of March 27, 1975 wrote of his suspicion that Kim had been abused and of his fear for her safety. He concluded his comment by writing "...this should, of course, be discussed and kept confidential."

Some of the physicians expressed concern that the ethics of their profession would require them to report only to the physician attending Kim who then would be expected to make any report required by law.

Upon the Inquiry there was no testimony to that effect that anyone was specifically ordered not to report Kim's case or was prevented from reporting

it because of the existence of some specific regulation or procedure of the hospital or any professional association or authority.

The Ministry's response, supplemented by Mrs. Farina's testimony, was that Bill 114 contained a revision of section 41 of The Child Welfare Act. At that time the proposed revision was contained in section 47 of the Bill, but it was eventually enacted as section 49 of The Child Welfare Act, 1978.

That revision, compiled with the definition of abuse contained in section 47 and the penalty provided for in section 94 of The Child Welfare Act, 1978, was intended to strengthen the requirement that professional persons report incidents of which they become aware in the course of their duties.

In the same area of its response, the Ministry repeated its statement of support of inter-disciplinary teams.

In direct reference to the recommendation that standards for reporting child abuse form a part of the criteria for hospital accreditation, the Ministry had requested the Ministry of Health to explore implementation of the recommendation.

It is interesting to me to note that, while the Ministry in earlier portions of its response opposed the suggestion that children's aid societies be subject to a process of accreditation and deprecated the value of such a process, the Ministry felt accreditation of other publicly funded institutions, hospitals, was not only beneficial but should be expanded to contain factors relating to the involvement of those institutions with children's aid societies.

It would seem to me that the Ministry is inconsistent in its views upon any process of accreditation.

The next two recommendations of the Task Force were set out in the Garber Report under the caption "Legal Consultation and the Courts."

In that section of the Garber Report the Task Force wrote of "the delicate balance" between society's obligation to protect children and the



individual parent's rights to raise children. The Task Force concluded that protection of children was paramount although efforts should be made to assist inadequate parents.

The Task Force wrote again of the dual function of a children's aid society as the authority which may remove a child from the home and provide testimony in court which may terminate or diminish parental rights, but which also may have to seek to rehabilitate the abusing family in the best interests of the child. Those functions were not necessarily complementary.

The Task Force wrote of concerns expressed to the effect that in contested or adversarial proceedings in court the best interests of the children involved were inadequately represented. They wrote too of children's aid societies not being fairly and fully represented in court proceedings.

The Task Force wrote of dissatisfaction with the courts. Proceedings were time consuming and frustrating because of adjournments. The personnel of children's aid societies encountered difficulties because of lack of investigative skills and lack of ability to prepare properly for court.

The Task Force expressed concern for the child who may be left "in a state of limbo for unacceptably long periods of time" and for "the child [whol] remains at risk unnecessarily when the court process is not expeditious."

All of those comments could be made in respect of the proceedings in court in relation to Kim. She was not adequately represented by the Society, the case was not well prepared or presented by the Society, the proceedings were not expeditious, there were many long adjournments, the time of witnesses was wasted when they attended only to learn that the matter was to be adjourned and Kim remained in a state of limbo for months, an unacceptably long time.

The Garber Report contained some comments similar to portions of Dr. Bates' testimony relevant to court proceedings. It wrote of evidentiary problems, particularly in relation to psychiatric and



psychological testimony, and the perceived disposition of the courts to require "unequivocal evidence of abuse." It wrote of the adversary system resulting in a perceived slant towards parents' rights. It expressed concern about undue optimism of the Courts in their reliance upon supervisory orders as a means of protecting children.

Accordingly the twelfth and thirteenth recommendations in the Garber Report were:

"That in all child abuse court proceedings the CAS must be represented by counsel; in all uncontested cases the CAS should have access to legal opinion, in order to fulfill its protection mandate.

Any child who is the subject of a child welfare hearing should be represented by his or her own lawyer, unless this is not recommended by the Court."

The responses of the Ministry to these two recommendations were essentially affirmative although they did contain some divergence of opinion or approach.

Mrs. Farina in her testimony spoke of the twelfth recommendation as being "poorly worded." She and the Ministry interpreted the first clause of the recommendation as being applicable to contested proceedings in child abuse cases. If that were the recommendation, the Ministry would accept and support it. The Ministry would not agree that the children's aid societies must be represented by counsel in all uncontested child abuse cases.

The Ministry accepted the second portion of the recommendation and agreed that the children's aid societies should have access to legal opinion in all uncontested cases of child abuse.

The Ministry's response was that it was preparing a paper setting forth guidelines in relation to representation in court and other legal services. That paper was to be circulated. If any children's aid society were in doubt the Ministry was available for discussion. The Ministry was conducting seminars with the assistance of regional planning

groups. It sought to involve children's aid society court workers, police, lawyers and judges. Mrs. Farina said it was hoped to have discussion upon such subjects as investigation, preparation for trial or hearing and presentation of evidence.

Mrs. Farina testified that that paper discussed the various situations which might require legal services of different types and the basis upon which those services might be obtained. It was not a recommendation that every children's aid society have a solicitor on staff.

It was suggested to Mrs. Farina that in 1975 and 1976 the Society encountered a problem in securing funds to engage a solicitor's services. She responded that it may have been perceived as a problem but,

"[her] understanding is that for legitimate court costs that the Ministry has never questioned use of legal people on child welfare matters."

Mrs. Farina felt the result would be that in all contested cases of child abuse the children's aid societies would be represented by counsel.

The Ministry's further response was that it would request The Law Society of Upper Canada to incorporate in its programme of continuing education a portion designed to familiarize lawyers with the handling of child welfare cases. The Ministry said it was prepared to support attendance at such a course by lawyers on the staff of or retained extensively by children's aid societies. The extent or nature of the support was not indicated.

The Ministry had spoken informally to the Chief Judge of the Provincial Court (Family Division) and had offered to participate in seminars arranged for judges of those Courts.

Mrs. Farina in her testimony commented upon Kim's case. She hoped that out of it seminars would be useful in clarifying for the workers employed by children's aid societies their rights, duties, powers and responsibilities in relation to matters before the Courts.

The Ministry's response to the thirteenth recommendation in the Garber Report was that it had already been acted upon in the revision of The Child Welfare Act. The relevant provisions are found in section 20 of The Child Welfare Act, 1978.

The recommendation was that the child be represented "unless this is not recommended by the court." The legislation reverses the procedure in that it requires the court to determine if a child who is not represented should be represented. If the determination is in the affirmative, the court shall direct that representation be provided for the child.

The approaches of the recommendation and of the legislation are different, but both arrived at the same result.

Mrs. Farina said that the recommendation and legislation arose out of a case in Toronto in respect of which some felt that the child's rights would have received more consideration if the child had had separate representation.

Mrs. Farina was not aware of what provisions had been made or were intended to be made to provide funds for such separate representation. There was no testimony to suggest that any such provisions had been made or considered. That would seem to be an oversight of some substantial significance.

The Garber Report then moved on to a consideration of standards for alternative care of children who have been abused. It spoke of such children being treated adequately for their physical injuries, but less than adequately for other effects of abuse. It spoke of the cycle whereby abused children acquired the potential to become abusing parents.

Dr. Bates testified to a somewhat similar effect when he appeared upon the Inquiry.

The Garber Report spoke of abused children who became difficult to handle and were mistrustful of all adults.

There was some testimony upon the Inquiry that Kim may have become such a child.

The Task Force wanted to ensure that the alternative care provided for abused children would be helpful to them and would not continue the abuse to any emotionally or physically damaged child. Helpful alternative care might reverse the traumatic effects of the abusive environment in which such a child had lived.

The fourteenth recommendation of the Task Force was:

"That the Ministry of Community and Social Services institute high standards for alternative care of abused children. This can be done by means of the following:

1. recruiting specially trained persons to provide this care
2. offering incentives to ensure that good alternative caretakers are properly remunerated for fulfilling this demanding and challenging responsibility
3. continuous and exacting monitoring of alternative care
4. requiring continuing education and training of caretakers."

The Ministry's response expressed its sharing of the concerns expressed by the Task Force. It spoke of instances in which children were maltreated by substitute parents.

Mrs. Farina testified that some abused children seem to attract abuse because of their personality characteristics. This seems to be in accord with some of Dr. Bates' testimony as to certain children for various reasons being "high risk kids."

Mrs. Farina believed that such children require specialized and careful handling. If such children are placed in foster homes the foster



parents should have received extra and specialized training.

The testimony upon the Inquiry did not express any criticism of Mr. and Mrs. Cecile who were Kim's foster parents for almost half of her lifetime. They were considerate and loving and concerned for Kim's welfare. Kim, at times at least, was not an easy child to handle. She taxed Mr. and Mrs. Cecile, but they persisted with Mrs. Kirby's encouragement. Mr. and Mrs. Cecile impressed me as being the special sort of person of whom Mrs. Farina spoke as being needed to serve as foster parents of abused children.

The Ministry said it was developing standards for foster care and the paper on standards for residential care was to be released in September 1978.

It spoke of planning a training programme for foster parents of abused children.

## Chapter XXVII

### The Ministry of Correctional Services

The Ministry of Correctional Services, which in this Chapter I shall call "the Ministry," became involved with Kim after Annals Popen, on February 23, 1976, was found guilty of the charge laid under section 40 of The Child Welfare Act. At that time His Honour Judge Nighswander ordered a pre-sentence report for his use upon consideration of the sentence to be imposed.

In section 5 of The Probation Act, as it was in 1975, there were provisions for such an order. Provincial Probation Officers were charged with responsibility for preparation of such reports.

George Brouwer, a Provincial Probation Officer, was assigned responsibility for preparation of the pre-sentence report.

Before preparing the pre-sentence report, Mr. Brouwer saw Annals Popen and Jennifer Popen on February 23, 1976. He spoke with Judge Nighswander on the same day. On March 4, he saw Jennifer Popen in the Popen home. At the same time he spoke briefly with Mrs. Lo of the Society. On March 5, Mr. Brouwer interviewed Mrs. Lo. He also spoke to Douglas Vandenberghe and Judith Vandenberghe, neighbours and friends of the Popen family. Mr. Brouwer's superior officer wrote to Dr. Curtin to arrange for that psychiatrist to interview Annals Popen and to furnish a written report following that interview.

Mr. Brouwer testified that his discussion with Mrs. Lo on March 5, 1976 was not very useful for his purposes as she had not then seen Annals Popen in performance of her duties. She told Mr. Brouwer that she was arranging for Annals Popen and Jennifer Popen to take the Parent Effectiveness Training Course. Mr. Brouwer did not see nor did he ask to see the Society's files relative to Kim's case nor did he seek to speak to anyone else at the Society. Mrs. Lo

was unable to give him much information because she had only recently been assigned to the case. She did tell Mr. Brouwer that Annals Popen had been attending Alcoholics Anonymous for about three and one-half months and wanted to have Kim returned to the family home.

Mr. Brouwer's information from Mrs. Lo was that initially everyone at the Society had thought Jennifer Popen had abused Kim. No reason for that suspicion was given to or asked for by Mr. Brouwer. No mention was made to Mr. Brouwer of the supposed chain of assaults by Annals Popen upon Jennifer Popen and then by Jennifer Popen upon Kim. Mr. Brouwer gained the impression that, by reason of Annals Popen's plea and the finding of guilt against him, the thinking within the Society had changed and that from February 23, 1976 it was assumed that Annals Popen had abused Kim.

Mr. Brouwer acknowledged that he prepared the pre-sentence report on the same assumption that Annals Popen, not Jennifer Popen had abused Kim.

Thus Mr. Brouwer, like others, misconstrued the nature of the charge which Annals Popen faced and the significance of his plea thereto. As a result, he approached his task with what is now known to be a misconception.

Mr. Brouwer found Annals Popen to be a very quiet and withdrawn person who permitted Jennifer Popen to answer questions addressed to him. When alone with Mr. Brouwer, Annals Popen was hesitant and appeared to have difficulty in responding to questions. He told Mr. Brouwer he had no memory of having inflicted any injury upon Kim, but accepted what others told him as to his having hit her.

Mr. Brouwer testified that in his interviews with Annals Popen and Jennifer Popen their responses were so vague that he was unable to form any opinion as to which of them abused Kim. It appeared to him that Annals Popen may have, but he was not certain. He felt Annals Popen's drinking was a factor.

In preparing the pre-sentence report, Mr. Brouwer had access to the brief prepared by the

Sarnia Police Force for use by the Crown Attorney upon the trial of the charge laid under The Child Welfare Act. That gave him Kim's relevant medical history including her various periods of hospitalization. He was told by Jennifer Popen that she was responsible for Kim's broken arm in March, 1975, an injury she said Kim had suffered in an accidental fall from her crib.

Annals Popen told Mr. Brouwer he was attending Alcoholics Anonymous, was no longer drinking and, therefore, was certain Kim would not be harmed again. But Mr. Brouwer was still uncertain as to who had caused Kim's injuries.

Mr. Brouwer did not speak to Police Constable Wyville or any other member of the Sarnia Police Force while preparing the pre-sentence report nor did he see the investigation report in the Sarnia Police Force's files. While Mr. Brouwer testified that he thought he had tried to contact Police Constable Wyville by telephone, his memory was such that I am not satisfied that he made any effort to speak with Police Constable Wyville. He did not testify as to having tried to speak with any other police officer.

Mr. Brouwer acknowledged that Police Constable Wyville could have been a source of valuable information for inclusion in the pre-sentence report. In my view Mr. Brouwer should have spoken to Police Constable Wyville or some other police officer familiar with the case. As was revealed by the testimony upon the Inquiry such an interview would have given information or views which Mr. Brouwer did not obtain.

In the pre-sentence report, Mr. Brouwer lists his sources of information for the preparation of that report as:

"The offender; Mrs. Jennifer Popen, his wife; Mr. and Mrs. Douglas Vandenberghe, (sic) landlord and neighbour; Mrs. Shirley Lowe, (sic) Caseworker, Children's Aid Society; Dr. J.J. Curtin; Probation Office Files."



Annals Popen's prior experience with the Ministry and its Probation Service involved a minor theft committed in 1964. Thus it would not seem that files in the office of the Probation Services would be helpful to Mr. Brouwer in relation to the offence in 1975. The only factor which appeared to be common to both offences was the reference to the consumption of alcohol.

Notwithstanding that Mr. Brouwer himself acknowledged that Mrs. Lo was not the source of much useful information, he did not speak with Mr. Carter, whom he knew had recently been replaced by Mrs. Lo, or with anyone else at the Society.

Thus the only useful impartial information for the pre-sentence report came from Dr. Curtin's report.

The balance of Mr. Brouwer's information came from Annals Popen and Jennifer Popen themselves and from their friends, Douglas and Judith Vanderberghe. Even Mr. Brouwer expressed doubt of the reliability of information from Annals Popen and Jennifer Popen.

By reason of Mr. Brouwer's failure to speak with a police officer and with someone of the Society more familiar than Mrs. Lo with the case, the sufficiency and impartiality and, thus, the value of the pre-sentence report is suspect.

The pre-sentence report is dated March 29, 1976, the day on which Annals Popen was sentenced.

The pre-sentence report sets forth much of what I have written in this Chapter, but it contains no mention of the initial suspicion as to Jennifer Popen's involvement with Kim's injuries and the uncertainty which lingered in Mr. Brouwer's mind as to who might have caused those injuries.

In my view, the pre-sentence report, by reason of the matters which I have mentioned in the immediately preceding paragraphs, was neither complete nor accurate. It did not really alert Judge Nighswander to the suspicion that members of the Society's personnel involved with the case had had as to Jennifer Popen's possible connection with Kim's

injuries. It did not tell Judge Nighswander of the shallow basis for Mrs. Lo's expressed optimism. It did not tell Judge Nighswander of Mr. Brouwer's lingering doubts and confusion after talking with Annals Popen and Jennifer Popen. It made no comment on Dr. Curtin's report.

Thus Judge Nighswander was deprived of information which might have led him to impose other conditions upon Annals Popen's term of probation or to consider some further action with reference to the order he had made placing Kim in the care of the Society.

Upon the Inquiry, Mr. Brouwer was asked about the absence from the pre-sentence report of any expression of his doubt or confusion as to who had caused Kim's injuries. His response indicated that he felt the final paragraph of the pre-sentence report expressed that doubt. That paragraph reads as follows:

"It is difficult to determine whether the offender's problems are due only to his drinking, or whether there are other underlying causes. If his problems are due to alcohol alone, then it would seem that his abstaining from alcohol would minimize a recurrence of this type of offence. This offender could well benefit from a period of supervision as an avenue of directing him into continued involvement with the Alcoholics Anonymous and family counseling."

With all respect to Mr. Brouwer that paragraph does not really indicate that he entertained any doubt as to Annals Popen's responsibility for Kim's injuries. It indicates doubt only as to what led Annals Popen to injure Kim and doubt as to whether alcohol alone was the source of the problem.

From the testimony upon the Inquiry, I am not clear as to what led Mr. Brouwer's superior officer to contact Dr. Curtin. Nothing in the transcript of the proceedings in Court on February 23, 1976 or even on February 25, 1976 refers to any psychiatric assessment of Annals Popen or to Dr. Curtin's prior interview with Jennifer Popen. In any

event, if it was on their own initiative, the staff of the Ministry of Correctional Services are to be commended for arranging for that assessment.

But, having received Dr. Curtin's report, the Ministry's personnel appear to have failed to recognize its significance. They did not pursue what I take to be Dr. Curtin's suggestion that further objective inquiries be made or psychological testing be conducted. Mr. Brouwer did not specifically draw that comment to Judge Nighswander's attention.

Mrs. Maughan, in her written report upon her first visit with Annals Popen and Jennifer Popen on June 20, 1976, did express a comment not unlike that of Dr. Curtin. At that time she seemed to grasp the significance of what she mentioned as an indication that perhaps Annals Popen and Jennifer Popen were not reliable sources of information. But nothing was done by the Ministry's staff to pursue or resolve Mrs. Maughan's concerns.

Later, in July, Mrs. Maughan seemed to have permitted herself to express sympathetic understanding to Jennifer Popen based only on what Jennifer Popen had told her. Still later in August, Mrs. Maughan determined she should check upon the accuracy of what Jennifer Popen had told her, but at the same time she seemed to be prepared to accept Jennifer Popen's explanation as to Kim's sore lip.

All of this indicates Mrs. Maughan's interest and her perception of a possible basis for doubt as to the real conditions in the Popen home. But nothing was done by the Ministry's staff to assist Mrs. Maughan in her quandary.

I express a corresponding criticism of the Ministry's staff for failing specifically to advise the Society of the existence of Dr. Curtin's report which, in effect, contained an assessment of both Annals Popen and Jennifer Popen. In this area of criticism I am less critical of the personnel of the Ministry than I am of the personnel of the Society for not taking the initiative to inquire about and to obtain a copy of the pre-sentence report and thus a copy of Dr. Curtin's report.



Upon Annals Popen's having been sentenced to a period of probation upon certain terms on March 29, 1976, Mr. Brouwer was assigned to supervise his probation. Mr. Brouwer set about that supervision by seeing Annals Popen in the office of the Probation Services on March 29, April 21, May 21 and June 18, 1976.

That degree of supervision would appear to have been adequate in the circumstances as Mr. Brouwer understood them to be. Kim was in the care of the Society and in a foster home. But there was no substantial evidence as to what, if anything, was accomplished at those meetings apart from Annals Popen appearing as required and telling Mr. Brouwer of various things. He spoke of his activities and of his love for Kim and his desire to have her returned to his home. He spoke particularly of his abstention from alcohol and his attendance at Alcoholics Anonymous and the Parent Effectiveness Training Course. There was no evidence that Mr. Brouwer directed Annals Popen into any area of activity, study, treatment or counselling. Mr. Brouwer relied really on what Annals Popen had selected on his own, Alcoholics Anonymous, with the assistance of Mr. Vandenberghe, and on what the Society had selected for him, the Parent Effectiveness Training Course. Mr. Brouwer seemed to think that Annals Popen's involvement with those "agencies," to use his term, was sufficient when combined with the monthly visits to his office.

Apart from evidence of his call to Mrs. Lo just prior to June 18, 1976 there was no evidence to indicate that Mr. Brouwer made any objective inquiries about Annals Popen's achievements in either the Parent Effectiveness Training Course or Alcoholics Anonymous. The evidence does not indicate that anyone at the Ministry made any such inquiries even after Mrs. Maughan, in her report upon her June 20, 1976 meeting with Annals Popen and Jennifer Popen, wrote:

"I got the impression that they did not absorb the full content of the course as they did not seem to understand some of the very basic points I mentioned."



In none of these meetings did Annals Popen deny that he had injured Kim; nor did he suggest that Jennifer Popen may have injured Kim. From what he was told by Annals Popen, Jennifer Popen and Mr. Vanderburghe, Mr. Brouwer felt that Annals Popen was complying with the terms of the probation order in that he was not drinking and was attending Alcoholics Anonymous regularly and was responding quite well.

At some time shortly prior to June 18, 1976, Mr. Brouwer telephoned Mrs. Lo to ask how Annals Popen and Jennifer Popen were progressing in the Parent Effectiveness Training Course. Only then did he learn that Kim had recently been returned to her home. Mrs. Lo told him that the Parent Effectiveness Training Course was completed or virtually completed and that the Society would be decreasing its involvement with the family, but not necessarily the frequency of its visits to the Popen home.

Mr. Brouwer's acquisition of that information was perhaps fortuitous. He obtained it only because of his own initiative, not because of any initiative by Mrs. Lo or anyone else at the Society.

That telephone call to Mrs. Lo was made by Mr. Brouwer to obtain information rather than to give information to the Society. It was an appropriate act in performance of his duty.

Mr. Brouwer reacted positively to his receipt of that information. He felt the circumstances surrounding his supervision of Annals Popen's term of probation had been altered and were to be altered even more by decisions and actions of the Society. Kim had been returned to her parents' home and to their personal care. The Society was going to reduce its involvement. So far as he knew no other social agency had an ongoing involvement with Kim's family.

Mr. Brouwer's response to that information from Mrs. Lo was to decide that Annals Popen's monthly visits to his office would no longer provide appropriate supervision of his probation. He wanted to ensure that someone continued to visit the Popen home so as to provide some opportunity to see that Kim was not injured again.

Mr. Brouwer regarded protection of Kim as an adjunct of his supervision of Annals Popen's term of probation. I think he was correct in that opinion. One of the conditions in the probation order governing Annals Popen's term of probation was that he keep the peace and be of good behaviour. Any abuse of Kim by Annals Popen or any failure of Annals Popen to protect her would constitute a breach of that provision. The possibility of a recurrence of the offence surely must have been seen by Mr. Brouwer.

Further, by reason of the application of provisions of The Probation Act, The Interpretation Act and the Criminal Code, Mr. Brouwer, as a Provincial Probation Officer, in performance and exercise of his duties and powers in supervising Annals Popen's term of probation, was a provincial police constable and was deemed to be a peace officer. Thus he had the duties and powers of any constable to ensure Kim's care and her removal to a place of safety pursuant to section 21 of The Child Welfare Act if he properly believed her to be a child in need of protection within the terms of that statute.

Mrs. Maughan, as a volunteer, was not affected by those statutory provisions. She was not a provincial police constable. But she was, in a sense, an extension of Mr. Brouwer and her reports to him upon her observations in and about the Popen home would be of assistance to him in performing his duties. Mr. Brouwer acknowledged his reliance upon Mrs. Maughan and his responsibility, as her supervisor, for her actions.

I have sought to ascertain the authority for the engagement of volunteers to assist provincial probation officers during the years of Kim's life. The Probation Act as it then was and the Regulations made thereunder are silent upon the subject. The Probation Act was repealed by the Ministry of Correctional Services Act, 1978.

Section 9 of The Ministry of Correctional Services Act, 1978 requires that every person providing volunteer services to the Ministry shall serve under the direction of an employee of the Ministry. That is the only reference to volunteer

probation workers which I was able to find in any statute or regulation.

Any such consideration was of little interest to the Inquiry in part because of my high regard for Mrs. Maughan and her performance of tasks assigned to her by Mr. Brouwer.

Upon the basis of a quite limited examination of statutes and regulations without delving into other documents or procedures which might have authorized the Ministry to accept Mrs. Maughan's services as a volunteer probation worker, it would seem that, at least until 1978, there was no statutory authority therefor.

Section 9 of the legislation enacted in 1978 seems tacitly to accept that volunteers may provide service to the Ministry, but even it does not expressly authorize the practice.

In the event that there was not, and perhaps is not even yet, sufficient authority for the use of volunteer probation workers, Mrs. Maughan and others may have been or may be exposed to liability which she and they have not contemplated.

To accomplish Kim's protection, Mr. Brouwer assigned Mrs. Maughan to provide direct supervision of Annals Popen's probation subject to his direction and advice. He felt his other duties would prevent him from visiting the Popen home as often as he hoped Mrs. Maughan would be able to visit. Quite wisely he felt that visits to the Popen home would be necessary.

Mr. Brouwer stated in his testimony that while he was a probation officer of some experience this was his first involvement in a probation arising from an incident of child abuse. He assigned duties to Mrs. Maughan. Mrs. Maughan had recently joined the staff of the Ministry as an unpaid volunteer. This was her first assignment as a volunteer and her first direct involvement with child abuse. During Kim's life Mrs. Maughan had no other assignment as a volunteer.



Mrs. Maughan impressed me very favourably. She is dedicated, sincere, able, articulate and interested in the well-being of her community.

While I have that high opinion of Mrs. Maughan it is unfortunate that she, a volunteer, was assigned such difficult duties in a case such as this.

Mrs. Maughan did receive a course of training as a volunteer. I am sure she excelled in that course. There was no testimony to indicate that the course contained any instruction specifically directed to management of cases involving child abuse and the problems, intricacies and subtleties peculiar to that type of case.

That is not to say that Mr. Brouwer had any greater training or ability to supervise Annals Popen's probation. He had no experience with cases involving child abuse and there was no evidence that he had received any training therefor.

I do not believe that the staff of the Ministry involved in Kim's case, even peripherally as they were, fully appreciated the serious nature of the case and its implications and the importance of their role in protecting Kim.

In performance of her duties, Mrs. Maughan had ongoing contact with Annals Popen and Jennifer Popen, particularly by visits to their home. In keeping with her instructions she prepared and delivered to Mr. Brouwer at the end of each month a written report upon her activity during that month.

Mrs. Maughan received her instructions from Mr. Brouwer on or about June 18, 1976. She read the file on Annals Popen. It contained the pre-sentence report and the probation order. She felt Mr. Brouwer had given her much of the information which was in the brief for the Crown Attorney prepared by the Sarnia Police Force, but she did not recall having seen that brief or the Investigation Report of the Sarnia Police Force. She did not have or seek access to the Society's files.

Mrs. Maughan testified that, notwithstanding what Mr. Brouwer had told her of his



understanding of the case and notwithstanding the contents of the file in the office of the Probation Services, she at once had some instinctive doubt that Annals Popen had caused Kim's injuries. This seemed to be based on her feeling, as a mother, that the mother of a child abused by the child's father would not have acted as Jennifer Popen had acted following Kim's various injuries. She felt Jennifer Popen had not taken the steps to protect Kim that a mother would be expected to take if the father were abusing the child.

Mrs. Maughan mentioned that doubt to Mr. Brouwer and he told her of the initial suspicion, which existed at least before Annals Popen's plea, that Jennifer Popen had injured Kim.

For the purposes of her supervision of Annals Popen's probation, Mrs. Maughan accepted as fact that Annals Popen had injured Kim. She felt that if Annals Popen had not injured Kim someone involved in the case long before her entry upon it would have discovered the truth. In the circumstances that was a reasonable presumption, but like almost everyone involved with the case, Mrs. Maughan thereby misconstrued the nature of the offence of which Annals Popen had been found guilty. Thus her thoughts were directed along a wrong course.

Mrs. Maughan first met Annals Popen, Jennifer Popen and Kim in their home on June 20, 1976. It was an uneventful introductory meeting. After an initial sense of apprehension was relieved there was no indication of any problem in the Popen home. Annals Popen was not drinking. He and Jennifer Popen had attended all but "a couple" of the sessions of the Parent Effectiveness Training Course. Mrs. Maughan felt they had not fully absorbed or understood that Course. They agreed to Mrs. Maughan visiting their home on a bi-weekly basis.

The situation in the home was such that Mrs. Maughan concluded her monthly report to Mr. Brouwer at the end of June, 1976 as follows:

"According to both Mr. and Mrs. P. the situation is so devoid of problems as to seem a little unrealistic. They are expecting their second child in early July

and hopefully this will present an opportunity to visit Mrs. P. in an unprofessional capacity and possibly get to know them a little more intimately."

The first sentence, which is similar to Dr. Curtin's comment in his report, indicates that Mrs. Maughan had some doubt that Annals Popen and Jennifer Popen were being entirely frank with her. Mrs. Maughan acknowledged that in her testimony upon the Inquiry.

There is no evidence to suggest that, upon receipt of that report from Mrs. Maughan or during any oral report by Mrs. Maughan to him, Mr. Brouwer instructed Mrs. Maughan to take any particular action to try to resolve such doubt or to achieve any particular goal in the supervision of Annals Popen's term of probation.

Mrs. Maughan then continued her visits to the Popen home and her oral and written reports to Mr. Brouwer. Neither she nor Mr. Brouwer contacted the Society to express any of the doubt that Mrs. Maughan had as to the true situation in that home or to give any information to the Society as to Mrs. Maughan's observations of the Popen family and their home.

On July 26, 1976, Mr. Brouwer did speak with Mrs. Lo when she telephoned him to advise him that the Society's involvement in the case would cease. Mrs. Lo indicated that she had some concern as to the truthfulness of Annals Popen and Jennifer Popen in her dealings with them. Mr. Brouwer then read to Mrs. Lo portions of Mrs. Maughan's written report for June. I presume that in the context of their conversation he would have read to Mrs. Lo, Mrs. Maughan's expression of doubt in the paragraph of her written report which I have quoted above.

One might be tempted to be critical of Mr. Brouwer and Mrs. Maughan for not having called the Society to advise them of Mrs. Maughan's concerns. It would seem however, in the present instance, that any such call would not have given any new information to the Society and thus would not have made any difference to the Society's management of Kim's case. Mrs. Lo already was suspicious as to the truthfulness

of Jennifer Popen and Annals Popen. Any call from Mr. Brouwer or Mrs. Maughan would only have revealed that Mrs. Maughan shared Mrs. Lo's suspicion. But it may have buttressed Mrs. Lo's suspicions and so encouraged Mrs. Lo to express them and seek to persuade Mrs. Harvey, her superior at the Society, that the approach to and management of the case by the Society should be varied.

In any event during the only call from the Society to the Ministry, Mr. Brouwer gave Mrs. Lo complete co-operation and disclosure of the contents of the Ministry's file. By that time the Society itself had made an important decision, the decision to seek an order enabling the Society to continue to supervise Kim's care and well-being in her own home.

I am aware that there was an interval of about five weeks between Mrs. Maughan's visit to the Popen home on June 20, 1976 and Mr. Brouwer's conversation with Mrs. Lo on July 26, 1976. I am aware too that time can be very material in the investigation and management of cases of child abuse. I do not think that in the circumstances the absence of communication by the Ministry's personnel to the Society during the period from June 20, 1976 to July 26, 1976 was material to the Society's management of Kim's case. There was no testimony to lead me to believe that, even if Mr. Brouwer or Mrs. Maughan had telephoned the Society on June 20, 1976 to inform them of Mrs. Maughan's feelings, the Society would have managed Kim's case in any way differently.

Therefore I am not critical of the staff of the Ministry for not having immediately called the Society when Mrs. Maughan had some misgiving as to the true state of affairs on June 20, 1976.

As Mrs. Maughan continued her visits to the Popen home she displayed a real interest in the well-being of the family and Kim. She saw no sign of injury to Kim which was significant to her.

Mrs. Maughan's written report for July describes her feelings after her visit to the Popen home on July 18, 1976. I have set forth in Chapter IX an extensive excerpt from that report. It shows that Jennifer Popen was expressing serious criticism of Mrs. Lo and that Mrs. Maughan was sympathetic to



Jennifer Popen's professed feeling of having been humiliated.

Mrs. Maughan's testimony upon the Inquiry was that during her visit to the Popen home on August 8, 1976, Jennifer Popen continued the criticism of Mrs. Lo; so, Mrs. Maughan decided she would contact Mrs. Lo about it. As events developed, Mrs. Maughan did not speak to Mrs. Lo prior to Kim's death.

It is unfortunate that Mrs. Maughan had not earlier made that decision to speak with Mrs. Lo. Had she done so and had she spoken to Mrs. Lo and had there been a full exchange of information, each of them would have been aware that Jennifer Popen was criticizing each of them separately. Then the nature of Jennifer Popen's strategy or tactic might have been recognized. That recognition might have led to some significant change in the management of Kim's case by the Society.

Thus I express criticism of Mrs. Maughan and of Mr. Brouwer and their superiors within the Ministry. I express that criticism because there was no established procedure for Mrs. Maughan or anyone to advise the Society of any information obtained by Mrs. Maughan or any feeling or suspicion harboured by her.

The absence of any such procedure should not have prevented Mrs. Maughan from contacting Mrs. Lo. I am confident she would have done so after August 8, 1976. Other things intervened. Time, so important in this type of case, ran out.

I express that criticism in full awareness of the provisions of The Probation Act as it was at all relevant times. Portions of that Statute are set forth in Schedule 2-N to the Report.

The staff of the Ministry fulfilled the letter of their statutory obligations in connection with the supervision of Annals Popen's probation. They appear to have ensured that Annals Popen complied with the terms set forth in the probation order. Subject to the result of his trial upon the charge of manslaughter laid after Kim's death, it would seem that Annals Popen kept the peace and was of good behaviour so far as the staff of the Ministry



was aware. He reported to Mr. Brouwer as required. He met Mrs. Maughan in his home as required. So far as they were aware he was abstaining from drinking alcoholic beverages and he was attending Alcoholics Anonymous which might generally, if perhaps not technically, be regarded as taking treatment for his alcoholism. Even as late as August 8, 1976, three days before Kim's death, Mrs. Maughan, although deliberately observant of Kim's appearance and behaviour, had not seen any indication of injury to Kim sufficient to be significant to her as indicating that Kim had suffered renewed abuse. But they failed to perform adequately what Mr. Brouwer properly recognized as an adjunct thereto, namely the protection of Kim from further abuse.

In performance of that supplement to their assigned role they should have taken the initiative to ensure that the Society was made aware of Dr. Curtin's report and the reservations expressed in it. They should have advised the Society of their own suspicions as to the true situation within the Popen family. They should have advised the Society of Jennifer Popen's criticism of Mrs. Lo's performance of her duties.

In my view the Ministry's staff should have done all of that even though the primary responsibility lay upon the Society.

In my opinion Mrs. Maughan's failure to advise Mrs. Lo of Jennifer Popen's criticism of Mrs. Lo's conduct had a great potential for harm particularly when it was coupled with Mrs. Maughan's sympathetic reception of that criticism. There is no evidence that it did, but it could very well have undermined Mrs. Lo's best efforts. On the surface at least it would seem to give the appearance that the two institutions or agencies represented by Mrs. Maughan and Mrs. Lo were at cross purposes. That sense of difference of opinion or approach as it were between the two institutions would make it difficult for Mrs. Lo to establish a strong position of authority and supervision.

I must of course note that Mrs. Lo is deserving of criticism in the same connection. She listened to Jennifer Popen's criticism of Mrs. Maughan and did not advise the Ministry or

Mrs. Maughan of that criticism. Mrs. Lo's testimony did not indicate how she reacted in Jennifer Popen's presence to that criticism of Mrs. Maughan.

I am satisfied that Mrs. Maughan and Mrs. Lo were trying, each in her own way, to establish some sort of trust or rapport with Kim's parents. That being so, each should have recognized how important was any criticism by Jennifer Popen of either of them and should have advised the other promptly upon hearing any such criticism.

While I voice this criticism of Mrs. Maughan, Mr. Brouwer and the Ministry they serve, I temper it. In the circumstances of their brief and peripheral involvement in Kim's case, I do not think that the absence of communication from them to the Society after June 20, 1976, to inform the Society of Mrs. Maughan's feelings about the case, was in any way crucial to the development of the tragedy. What Mrs. Maughan sensed that day was already sensed in the Society by Mrs. Lo. Similarly the absence of communication after July 18, 1976, to inform the Society of Mrs. Maughan's observations of changes in Jennifer Popen's attitude, while perhaps of greater importance, was not crucial. It was not much after July 18, 1976 that Mrs. Lo herself sensed Jennifer Popen's changed attitude. Indeed Mrs. Lo had even earlier noticed various changes in Jennifer Popen's attitude and a coldness toward Mrs. Lo. I do not think any communication from Mrs. Maughan or Mr. Brouwer would have made any great difference.

In expressing this criticism of the Ministry's staff, I am aware that Annals Popen was the only person undergoing a term of probation. Subject only to the powers of a constable given to Mr. Brouwer by legislation, neither Jennifer Popen nor Kim were, in law, subject to the supervision of the Ministry. The Ministry could not require Jennifer Popen to do anything or to abstain from doing anything. The Ministry could not have required Jennifer Popen to submit to any assessment or testing by anyone. In practice, Mrs. Maughan's actions in relation to Annals Popen's term of probation were not as restricted that she confined her interest only to him.

While I have expressed criticism of Mr. Brouwer in some areas, I do commend him for being prepared to view his role and that of the Ministry as extending beyond the strict terms of The Probation Act and the probation order so as to include some effort to protect Kim.

Similarly my expressed criticism of Mrs. Maughan is as nothing compared with my respect for her as an individual and as a concerned and caring citizen possessed of considerable talents and human understanding, prepared to give of herself and her time without financial remuneration, to help to improve the lot of others. She is to be commended for her interest and for her actions which demonstrated it. She did her considerable best. I think the City of Sarnia and the County of Lambton, like any other city or county, would be better places in which to live if there were more Katie Maughans.

I hope my comments do not dissuade Mrs. Maughan or any other volunteer from continuing to serve. Theirs is a worthwhile, but often thankless task. They are needed.

## Chapter XXVIII

### The Farina Committee

In December, 1977 the Board of Directors of the Society were startled to note harsh criticism in the local media. The criticism related directly to the manner in which the Society had cared for Kim.

Until that criticism appeared the Board of Directors, as a Board, was unaware that the Society was in any way involved in the life of the child whose parents were on trial for manslaughter. Mr. Higgins was perhaps the only member of the Board of Directors who knew of the involvement.

In mid-August, 1976 Mr. David Allen, President of the Society, was advised that a ward of the Society had died while still in the care of the Society. He understood that she had died by accidental means. Until the criticism of the Society appeared he did not associate the death of that ward with the manslaughter trial.

As a result of the published criticism of the Society a special meeting of its Board of Directors was held on December 15, 1977.

Prior to that meeting, Mr. Allen approached the Executive Director of The Ontario Association of Children's Aid Societies for advice. He inquired as to whether that Association would be prepared to assist the Society by appointing a committee which would be authorized to investigate the care of Kim and to report thereon to the Board of Directors of the Society. He received a favourable response.

At the meeting of December 15, 1977, Mr. Lovatt reported upon the history of Kim's case and he made some recommendations "to assist in preventing any recurrence of the Popen tragedy." I deal with the accuracy and adequacy of that report and with those recommendations elsewhere. That was followed



by general discussion during which Mrs. Harvey and Mr. Lovatt answered questions.

The balance of the meeting is recorded in the minutes thereof as follows:

"A suggestion for board consideration was then introduced by the President, Mr. Dave Allen, on the establishment of an impartial board of inquiry composed of three professional social workers selected by the executive committee of the O.A.C.A.S. Their job would be a thorough (sic) examination of all facts pertaining to the Popen case. The impartial inquiry of three social workers would then be asked to render an opinion on corrective measures that will help the Agency to prevent the recurrence of any such tragedy in the future.

The formal motion of adoption was moved by Ald. M. Brown and seconded by Mr. R. Provencher that

'a three person board be selected by O.A.C.A.S. executive committee to review the case in question and attempt to complete such a study within one month that will bring forth any recommendations they wish to make for future operations of this Children's Aid Society.'

After a brief discussion on its terms of reference in reporting to the Board of this Society and the financing of this impartial inquiry the motion received the unanimous consent of the Board members present."

On December 19, 1977, Mr. Allen as President of the Society, wrote to the President of the Ontario Association of Children's Aid Societies. In part he wrote as follows:

"I am requesting, subject to your agreement, that you select 3 social workers whom you feel could visit Sarnia in order to 1) study this case in detail, 2) evaluate the decisions and actions taken by our own staff in the light of the actions taken by

other community agencies, and 3) make a report summarizing the activities of the staff with respects (sic) to this case and offer any reactions or recommendations they feel appropriate. Hopefully a report could be made available for January 24, 1978, which is our next regular board meeting.

The intention of such a review would be to examine the appropriateness of the staffs' actions in this case in order to prevent the recurrence of such a tragic event in future. Because our board is essentially a lay group we are not in the best position to take an objective nor impartial view of the matter. Hence a 'peer review' would be more fitting.

I am unaware of any past requests which are similar to the one being proposed here. Nevertheless I am hoping that you will look favourably on it. It is my further hope that the appointed parties would provide, for any member of our staff who may wish to express their views, an opportunity to do so."

In due course the members of the Committee were appointed. The members were Mrs. Margaret Farina, Mr. Bruce Heath and Mr. Arne Petersen. Mrs. Farina was appointed to be chairman of the Committee; so, for ease of reference in this chapter, I call the Committee the "Farina Committee" or the "Committee."

The academic and professional qualifications of the members of the Farina Committee are set forth in Schedule 1-E to this Report. Each member was well qualified by training and experience to perform the task assigned to the Committee. From my examination of their qualifications and from my assessment of them as a lady and gentlemen testifying upon the Inquiry, I have no hesitation in accepting their testimony and the validity of their report.

It is convenient for me now to deal with one somewhat questionable aspect of the circumstances surrounding the preparation of their report.

I have spoken of their report in the singular. In doing so I was not wholly accurate. They prepared two reports. That is the area of my concern. Had there not been full testimony of how that came to pass and had either of the two reports not been produced and had I not had the opportunity of observing the members of the Farina Committee as they testified, I would have had some difficulty in ensuring myself as to the validity and integrity of their report. All three of those provisions were met. I am satisfied. I will treat the two documents as constituting one report.

Nonetheless it is unfortunate that the impartiality of the Committee and the validity and integrity of their report were exposed even to an appearance of impropriety. It was entirely unnecessary.

It was the intention of the Board of Directors of the Society that the Farina Committee be independent of any influence from any source except their own professional expertise. The Board of Directors sought to achieve that independence by asking the Ontario Association of Children's Aid Societies to appoint the members of the Committee. The resolution asked the Committee to review the case and "bring forth any recommendations they wish to make." Mr. Allen's letter reinforced the expression of desire for impartiality.

The resolution itself was *une carte blanche*. Mr. Allen in meeting with the Farina Committee when they came to Sarnia to begin their study enlarged even that. He advised them that it was expected they would examine and report upon any administrative procedures or practices which in any way affected the handling of Kim's case.

It was assumed that the Committee would deliver its report to the Board of Directors of the Society. No thought was given to the possibility that that report might be given to any other person or authority. The Ministry of Community and Social Services, hereinafter called the "Ministry," was not involved beyond permitting one of its employees, Mr. Heath, to serve on the Committee.



On Friday, February 17, 1978 at a meeting of presidents and local directors of children's aid societies held in Toronto, Mrs. Farina gave Mr. Allen a copy of the report of the Farina Committee dated February 15, 1978. For some reason, not given in testimony, Mrs. Farina and Mr. Allen met that day with His Honour Judge George M. Thompson the Associate Deputy Minister of the Ministry. They looked at that report, but not in particular detail because time had not permitted. Mr. Allen lent his copy of the Committee's report to the Ministry official who had a photocopy of it made.

On Monday, February 20, 1978, Mr. John K. Macdonald, Director of Child Welfare under The Child Welfare Act, who had been in the office of the Associate Deputy Minister when the Committee's report was discussed on February 17, 1978, telephoned Mrs. Farina. He advised her that Mr. W.A.D. Rutherford, Q.C. Director of Legal Services of the Ministry had looked at that report. Presumably that was the copy made by the Ministry. Mr. Macdonald told Mrs. Farina that the solicitor was concerned that some statements in the report might be misconstrued and suggested that those statements be deleted.

On Tuesday, February 21, 1978, Mrs. Farina called a meeting of the Committee to consider that suggestion. They met with officials of the Ministry and its solicitor. By that time the Ministry's staff had read the Committee's report thoroughly. The Ministry was considering the advisability of a judicial inquiry pursuant to The Child Welfare Act. The Ministry officials suggested that the contents of the Committee's report warranted such an inquiry, particularly because of pressure upon the Minister in the Legislative Assembly urging him to do so.

Mrs. Farina said the Committee appreciated the advice of a solicitor. They had not earlier sought or had such advice. She said that on the suggestion of the Ministry's officials and on the advice of the Ministry's solicitor, the Committee:

"agreed to make some alterations in the report...they were extremely minor alterations and the substance of the report was in no way altered or changed."



In this area, Mrs. Farina testified that at the outset it was intended that the Committee's report to the Board of Directors of the Society would be a "confidential" document. But by February 20, 1978 she felt that confidentiality could not be maintained. Mrs. Farina did not say it, but indeed confidentiality had been breached when a copy of the report was made for the use of the Ministry.

Her concern that confidentiality could not be maintained was a factor in Mrs. Farina's acceptance of the advice of the Ministry's solicitor.

I have reproduced a copy of the original report of the Farina Committee dated February 15, 1978 as Schedule 2-F to this Report and a copy of the amended report dated February 24, 1978 as Schedule 2-G. Readers of this Report may wish to form their own judgements as to whether the amendments are "extremely minor" and whether the "substance of the report" has been changed.

My own view is that the amendments proposed by the officials of the Ministry were designed and intended, at least in part, to remove or minimize criticism of that Ministry.

By this time, from reading the first version of the Farina Committee's report, if not from other sources, the Ministry knew that its performance of its duties would be subject to examination and perhaps to adverse criticism if an independent investigation of Kim's care and death were undertaken as by this Inquiry.

In proposing the amendments to the Committee's report the Ministry's officials put the Ministry's own self-interest ahead of the independence and reputation of the Farina Committee and its members.

The amendments certainly were not "minor" in the eyes of the Ministry. In the light of all the testimony and circumstances, I do not regard them as "minor."

I note that Mr. Heath, who had signed the first version of the Committee's report, did not sign the second. Mr. Heath was at all material times an

employee of the Ministry. It was on the advice of the Ministry's solicitor that Mr. Heath declined to sign the amended report. He said there was concern that the Committee's report might tend to interfere with the judicial inquiry which was contemplated.

I do not understand the reason for such advice. Mr. Rutherford, the Ministry's solicitor, did not testify upon the Inquiry. I did not feel it necessary to the purposes of this Inquiry that he be subpoenaed.

One might be excused for believing that the Farina Committee amended its report to suit the pleasure of the Ministry. In all of this, the Ministry did no good service to the Committee or to the Society.

I do not know how the Ministry became involved in the process. Mr. Heath was an employee of the Ministry, but the Society had intended and expected an independent and impartial report. I am confident that when the Ontario Association of Children's Aid Societies sought out Mr. Heath to serve on the Committee the intent was that he would bring to the Committee all of his skills and knowledge as an individual and not as an employee or agent of the Ministry.

In my view no official of the Ministry should have participated in any way in the preparation of the report of the Farina Committee to the Board of Directors of the Society. Certainly the Society did not request that participation. Nor did the Committee. In my view the Ministry quite inappropriately, unnecessarily and to no good purpose interfered in the relationship between the Society and the Farina Committee.

The action of the Ministry's officials exposed Mr. Heath and the Committee to the possibility of criticism. It could quite fairly be suggested that the Committee in producing its report was unduly and improperly influenced by the Ministry and by Mr. Heath whom the Ministry regarded as its representative on the Committee.

The Ministry was in error to regard Mr. Heath as its representative on the Committee even

though he was an employee of the Ministry. The Board of Directors of the Society had wanted an objective and impartial review of Kim's case. It would not get such a review if one or more members of the Committee were a representative of a body whose own interests might be involved.

In this review of the function of the Farina Committee I propose to treat the two versions of their report as being one report. In testimony upon the Inquiry each member of the Committee averred as to the unanimity of their opinions, separately and independently formed. All three had signed the first version of the report. Mr. Heath had not signed the second version, but, in his testimony, he stated his agreement with its contents. Neither Mr. Heath nor Mr. Petersen were questioned about the first version of the report. Only when Mrs. Farina testified, after them, was reference made to that first version. Mrs. Farina did not disclaim the validity or accuracy of the first version. While Messrs. Heath and Petersen were not recalled I am satisfied that, having signed the first version, they too would have defended its validity and accuracy.

The unanimity of opinion of the members of the Farina Committee was such that Mrs. Farina and Mr. Petersen, each in separate testimony, described it as being "uncanny." Each member of the Committee testified that, independently of the others, each had identified or recognized the same areas of concern or the points upon which they wished to comment in their report.

Subject to my comments upon it, I regard their report as being an excellent document. Its thoroughness and depth belie the pressures that were upon them to complete it quickly. The testimony of the members of the Committee were of great value to me.

The members of the Committee observed and testified as to the affairs of the Society, particularly as they might have affected the care which Kim received while a ward of the Society. Their review and testimony extended beyond those particulars to some observations as to the conditions generally prevailing in the Society at the relevant times.



The conclusions reached by the Farina Committee as recorded in their report and in their testimony were a substantial contribution to my Report. Those matters which they identified as areas of concern were demonstrated to be so by the testimony upon the Inquiry.

I propose now to review and comment upon their report. My comments shall be in the sequence of their report rather than in a chronological order.

The Committee voiced some concern as to discrepancies between two reports upon Kim's case prepared by members of the staff of the Society. One of those reports was dated December 8, 1977 and was prepared for the Child Welfare Branch of the Ministry. The second was dated December 15, 1977 and was prepared for the Board of Directors of the Society.

The concern expressed by the Committee parallels my view that the recordings and documents in the files of the Society are not reliable. I have identified in my Report several instances of inaccuracies in the papers of the Society.

The Committee reviewed their report against the background of the recordings in the files of the Society.

They noted that the file recordings indicated that on June 17, 1975 the Society first became aware of allegations that Kim had been abused. The report to the Ministry shows the date to be June 1, 1975 and the report to the Board of Directors shows it to be simply June, 1975.

They noted that the file recordings under date of June 19, 1975 state "this defensive hostile young mother should be closely supervised considering the history of the recent six weeks" and refer to two prior incidents of injury and hospitalization. That statement and reference are not mentioned in any way in either the report to the Ministry or the report to the Board.

I would note as well that the report to the Board of Directors stated that Jennifer Popen had a



plausible reason for the faint bruises seen by Mrs. Saul and Mrs. Hoad on June 17, 1975. Neither the recording in the files nor the report to the Ministry mention any such plausible reason. Neither the testimony of Mrs. Saul nor that of Mrs. Hoad mentioned that Jennifer Popen offered any plausible reason for the bruises. The only "explanation" was a denial that Kim had been abused. That denial was attributed to both Jennifer Popen and Annals Popen.

They noted that, under date of June 19, 1975, the recordings in the files of the Society state that:

"The case was due for assignment to H.R.C., ...There was apparently a misunderstanding about the opening of the case at that time."

The report to the Ministry, still in the same portion bearing the date of June 1, 1975, states:

"the case was not assigned but a follow-up call was made to the City Police who suggested that we wait to make a home visit. They would report back to us if necessary."

The report to the Board of Directors, still in the portion dated June, 1975, stated that there was

"'insufficient evidence to warrant intervention on the part of the society' and that the police accepted a 'watching brief.'"

The members of the Farina Committee discussed the above matters with the Sarnia Police Force. Consistent with the testimony of police officers upon the Inquiry, they were advised that the Sarnia Police Force denied having made the suggestion or either arrangement referred to in the recordings and reports of the Society. In keeping with the testimony of police officers upon the Inquiry the members of the Farina Committee testified that the members of the Sarnia Police Force stated that they had telephoned the Society on July 2, 1975 to "follow-up" the case.

The Committee believed that the discrepancies in the three documents were "serious" and "warrant[ed] further explanation." That is the way the Committee wrote in the February 24, 1978 version of their report. The February 15, 1978 version of their report expressed their opinion that the discrepancies they had noted were

"serious in that they could indicate an attempt to camouflage case handling that is seriously inept, and inexcusable in a case that is clearly one of child abuse."

This is the first area of amendment of the Farina Committee's report following the intervention by personnel of the Ministry, including its solicitor. The effect of the amendment is apparent. It removes the suggestion that the discrepancies might have arisen from an attempt to deceive and the motive for such attempt. That is unfortunate.

I share the opinion, expressed by the Committee or inherent in their report and testimony, that there was an attempt to deceive those who might read the documents without the benefit of knowledge of the testimony presented upon the Inquiry. The motive was to conceal the errors and omissions in the handling of Kim's case.

It would seem that the abundant caution on the part of the Ministry's solicitor prevented the Committee from clearly expressing their obvious concern that all was not well in the handling of Kim's case and that someone was attempting to conceal the ineptitude of some of the personnel of the Society. No testimony was given to suggest that any attempt was made to rephrase the portions of the deleted phrases or clauses so as to remove any word or innuendo that may have exposed the members of the Committee to any risk of civil liability. Removal of only four words, "an attempt to camouflage," would seem to be sufficient to remove such risk, but yet would leave untouched the opinion that the handling of the case by the Society was "seriously inept" and "inexcusable."

The whole bite of the first version of that portion of the Farina Committee's report was removed to be replaced by what, in the light of matters dealt

with elsewhere in the Report, I would regard as being a somewhat standard approach of the Ministry to suggest review or scrutiny.

The Farina Committee felt that the points at issue in this regard were the handling of Kim's case in its initial phase and the discrepancies in reports and records of the Society and the Sarnia Police Force.

The Committee noted what it described as the excellent quality of the initial intake of June 17, 1975 and the responsiveness of the Society then. That related to the work of Mrs. Dick, Mrs. Saul and Mrs. Hoad from the time of Police Constable Gander's arrival at the offices of the Society until Mrs. Saul completed her report to Mrs. Harvey that day.

In his testimony Mr. Heath said that, in his opinion, the Society did not have sufficient information to justify Kim's apprehension by the Society under The Child Welfare Act on June 17, 1975.

The two versions of the Committee's report, in different words, but to the same effect, express the Committee's view that they were not given any adequate explanation for the case having been left unattended for about ten weeks until August 29, 1975.

I have expressed in this Report a corresponding opinion that such lack of attention was not explained to my satisfaction. The Farina Committee appear to have accepted what they were told about the entry in the records under date of August 29, 1975. I have declined to accept it as being accurate.

The second incident of amendment of the first version of the Committee's report occurs in this portion of their report.

The second version, unlike the first, contains a recommendation that, in view of the hiatus from mid-June to late August, 1975,

"procedures, routines and monitoring of the way in which cases are transferred from intake should have further scrutiny."

That addition does not in any way detract from the general tenor of the first version. It is a logical development of the first version.

My only criticism of the amendment would be to suggest that its wording seems to presuppose that "procedures, routines and monitoring of the way in which cases are transferred from intake" were in existence. I am not satisfied that they were. No written procedures upon transfers of cases were produced by the Society upon the Inquiry. Some witnesses, such as Mrs. Harvey, testified that there were, within the Society, generally accepted procedures well-known to the staff.

The testimony as to what happened from June 17 until August 31, 1975 persuades me that the staff of the Society were not aware of any such procedures. Mrs. Dick and Mrs. Saul, both experienced workers, expressed some assumptions as to what might have happened, but neither indicated there was any generally accepted policy or procedure. Neither of them said that any procedure required Mrs. Dick's notes and Mrs. Saul's notes to be dealt with in any particular way. Each was unsure as to what had happened to her notes, but tended to feel they had been given to Mrs. Harvey who, in her turn, was unable to explain the lack of immediate continuity from June 17, 1975.

At this point in the first version of their report the Farina Committee devoted almost a full page to a discussion of their efforts to determine what had happened to Kim's case during the ten weeks from June 17, 1975. They outlined conversations with Mr. Carter and Mrs. Harvey. They mentioned some conflict between the positions taken by Mr. Carter and Mrs. Harvey. They showed how easily they were able to check and reject one of Mrs. Harvey's suggestions as to why the case was not dealt with. She had suggested that Mr. Carter had been on holidays, but records of the Society negated that.

The long paragraph concluded:

"In any event there is no escaping the fact that responsibility for case assignment and for monitoring what happens to cases, rests clearly with the supervisor and no one



else. This is particularly important in abuse cases. The explanations give (sic) to the committee are not sufficient."

The entire paragraph was not reproduced in the second version. This was a further amendment after the Committee received advice from the Ministry and its solicitor. Again the Committee's report was emasculated. Its criticism of Mrs. Harvey, merited on the basis of the testimony presented upon the Inquiry, was removed.

There was no testimony that any effort was made to revise the phraseology of the paragraph to remove any perceived risk of exposure to civil liability. Had the Board of Directors been left with only the second version of the Committee's report they would not have been aware that the Committee fixed Mrs. Harvey with responsibility for the lack of assignment and monitoring of Kim's case. The Board of Directors would not have been aware of some of the explanations which the Committee regarded as being "not sufficient."

At this point in the first version of their report the Committee wrote of their concerns about Mr. Higgins' "apparent interference" with Mr. Carter and Mr. Carter's

"lack of knowledge of his rights and his failure to challenge or to ignore Mr. Higgins' interference."

They wrote of Mr. Carter seeking advice from Mrs. Harvey who told him to honour Mr. Higgins' request, but who, when asked by the Committee, could not explain why she gave that advice. The Committee commented on the failure of the Society to seek advice.

The Committee mentioned Mr. Higgin's membership upon the Board of Directors. The Committee was told that Mrs. Harvey was intimidated by Mr. Higgins.

The first version of the report contained a short paragraph to the effect that Mrs. Harvey told them that she had "previously" asked Mr. Lovatt to

retain a lawyer on behalf of the Society, but her request was denied on the ground of lack of funds.

The first version of their report then set forth the Committee's concern about court hearings related to Kim's case. The Committee wrote of Mrs. Harvey's request for wardship for only two months which she said was a "strategy" to deal with Mr. Higgins and which she explained to Judge Nighswander privately. That expression of concern ended as follows:

"If this is an accurate example of the way the court is used, and if this is an example of methods employed by the Society's supervisor/court worker, and if this is an example of the degree of trust between supervisor and caseworker and of the attitude to Mr. Higgins, then it brings the Society's integrity into question, as well as that of the court."

For the sake of brevity in the designation of any court, I shall hereafter in this Chapter, if the context permits, call the Provincial Court (Family Division) of the County of Lambton the "Family Court"; the Provincial Court (Criminal Division) of the County of Lambton the "Criminal Court" and the Family Court and the Criminal Court, collectively, the "Provincial Courts".

All of that expression of concern about Mr. Higgin's apparent interference with Mr. Carter, about Mr. Carter's lack of knowledge and his failure to oppose Mr. Higgins, about Mrs. Harvey's failure to assist Mr. Carter, and about the hearings in the Provincial Courts, particularly the portion reproduced in the preceding paragraph, was not repeated in the second version of the Committee's report. Nor was Mrs. Harvey's comment about Mr. Lovatt's rejection of her suggestion that the Society retain a lawyer.

That expression of concern had required about three full pages of the first version. It was replaced by two short paragraphs, on about one half of a page, in the second version.

The first of those two paragraphs was simply a recommendation that the Society retain a solicitor and that the staff receive training in relation to the Court and the legal representatives of clients.

The second paragraph recommended that the Society request The Law Society of Upper Canada to advise them as to the possibility of conflict of interest if a member of its Board of Directors were a lawyer representing a client involved in a case active in the Society.

Gone from the first version was all of the criticism of the personnel of the Society, particularly Mrs. Harvey and Mr. Carter. Gone was all of the criticism of Mrs. Harvey's conduct in her alleged strategy in dealing with Mr. Higgins. Gone was the condemnation quoted in the preceding paragraph. Gone was the reference to Mrs. Harvey's statement about Mr. Lovatt's refusal to retain a solicitor. Gone was the reference to Mrs. Harvey being intimidated by Mr. Higgins.

The strong and expressive paragraphs deleted from the first version were replaced by a mild and innocuous recommendation for staff training in these areas and for the employment of a solicitor.

The only item that was more forcefully stated in the second version than it was in the first version was that which related to the possibility that Mr. Higgins had a conflict of interest.

Anyone reading only the second version of the Farina Committee's report without some awareness of the testimony presented upon the Inquiry would not learn that the Committee had the various concerns it expressed and that the Society's personnel lacked some knowledge and expertise basic to child welfare in Ontario.

In both versions of their report the Committee then moved on to express their concern about the rationale for and the procedure used in transferring Kim's case from Mr. Carter to Mrs. Lo.

In the beginning of this portion each version employs similar words and phrases to describe

what the Committee felt were customary, sound and acceptable practices and procedures to be followed in any case of a transfer of a case from one worker to another. These involved a conference of the supervisor and workers, at least the two directly involved, and a clear recording of the rationale of the transfer, all followed by a gradual process to introduce the new worker to the client and to explain the reason for the transfer.

The Committee then related its examination of this phase of the management of Kim's case. They had found no recording of the reason for the transfer. There was merely a recording of its announcement by Mrs. Harvey to Mr. Carter. The Committee inquired about this.

Mrs. Harvey gave them several reasons for her decision. Those reasons included Mrs. Harvey's desire to have a female worker on the case and her belief that Mrs. Lo and Jennifer Popen would be "a good match" because both were young, one was oriental and one was Jamaican. They included the fact that Mrs. Lo, new on the staff of the Society, had a small caseload. Another reason stated by Mrs. Harvey was that Jennifer Popen would not talk to Mr. Carter.

Each version of the report then records that Mr. Carter gave them "a different picture." But the two versions of the report do not describe that "different picture" in the same way.

The first version is that Mrs. Harvey told Mr. Carter that the case was to be transferred to Mrs. Lo and he felt strongly that that was being done to appease Mr. Higgins.

The second version is simply a statement that Mr. Carter had not been involved in the decision to transfer the case and that his views as to the reasons for the transfer were at variance with those stated to the Committee by Mrs. Harvey.

While both versions of the Committee's report are equally critical in their expression of concern about the failure to follow customary and sound professional practice, the strength of the criticism is removed from the second version by



deletion of the statement by Mr. Carter as to what he felt was the reason for the transfer.

The amendment leaves anyone who reads only the second version without any information as to the differences between the views expressed by Mrs. Harvey and those expressed by Mr. Carter.

Both versions of the report contain a short paragraph in which the Committee question the method used in transferring the case. They state the transfer should be for the benefit of the child and the planning for and protection of her.

In the first version that paragraph ends with the sentence:

"In considering the method used in transfer we must question the Supervisor's use of her authority, as well as her professional practice."

That sentence does not appear in the second version. It is another instance of amendment by removal of directly stated criticism of Mrs. Harvey's style or method of performing her duties and of the adequacy of her professional practice.

Then both versions contain a paragraph continuing the discussion of the rationale for the transfer. Both versions contain the statement that a case as obviously serious as Kim's should never be assigned to an inexperienced worker with no social work education or experience and that Mrs. Lo had been with the Society for less than three months. Each version states the Committee's recommendation that

"these cases be assigned to the most experienced, well qualified personnel."

In the first version that paragraph concluded with the sentence:

"Assignment of this case to a person with virtually no protective service experience and no social work qualifications was a gross error in judgement on the part of the supervisor."

That sentence does not appear in the second version. The amendment effected the removal of a strongly stated direct criticism of Mrs. Harvey's judgement.

Each version then began an examination of the process of decision-making within the Society and particularly the decision to return Kim to her parents. The Committee set out the identity of those to whom they spoke in making that examination.

Each version mentions the recording of a meeting or case conference on May 6, 1976 to decide if Kim would be returned before or after the birth of Jennifer Popen's child expected in early July. Each version states that there did not appear to be any question of Kim's eventual return. They stated that the two files, one in the Family Services Department and one in the Children's Services Department of the Society, indicate that the decision to return Kim was made at that conference.

Each version continues to state that those recordings do not correspond with statements made orally to the Committee. The clause in the first version is as follows:

"...the verbal statements made to us indicate that the conference was merely a formality, that the family service supervisor had previously made the decision that the child would be returned, and that the opinion of others would not be considered."

In the second version that clause has been amended and is as follows:

"the verbal statements made to us indicate that the basic philosophy of the family service department was to return children to their homes, and that this philosophy would usually overrule individual opinions."

The amendment has varied the thrust of the Committee's criticism. In the first version it was to the effect that Mrs. Harvey had made the decision to return Kim and would not consider the contrary opinion of anyone. In the second it was merely a

statement of the "basic philosophy" of the family service department and that it usually overruled individual opinions.

While the statement of basic philosophy is set forth in the second version, the criticism contained in the first version more accurately reflects the facts of Kim's case as I have found them to be. The amendment shifts the responsibility for the basic decision, the decision that Kim would be returned to her home, as distinguished from the subsidiary decision, the decision as to the appropriate time for that return to be effected. It shifts the responsibility for the basic decision from Mrs. Harvey, where it belongs, to "the basic philosophy of the family service department."

Each version then mentions the comments attributed to Police Constable Wyville, "Do you want her in her grave within three months?", and a comment by Mr. Khattab that he was "amazed to hear that the child had been returned." Both versions mention the recording, in the file in the Children's Services Department, of Kim's upsets and regressions after visits home.

In the first version the sentence mentioning those upsets and regressions is as follows:

"The Child Care record indicates Kim's upsets and regression after visits home, and Mrs. Popen's awkward handling of the child."

That paragraph then was concluded with the following two sentences:

"It would appear that the philosophy of the family service department supervisor was to return children to their homes as soon as possible regardless of the opinion of other workers familiar with the case. It appears that the Society lost sight of its primary mandate which is to protect children."

In the second version the sentence mentioning Kim's upsets and regressions does not contain the clause "and Mrs. Popen's awkward handling of the



child." The concluding two sentences of the paragraph just quoted are replaced by the following:

"It would appear from the information given to us that the Society, in an effort to re-unite the family, lost sight of its primary mandate which is to protect children. It is our opinion that the process of decision-making related to the handling of cases requires further scrutiny."

The amendments to that paragraph remove the sole reference which indicated something akin to criticism of Jennifer Popen. Further criticism of Mrs. Harvey was removed. The criticism of the Society as an entity remained. The amendment contains the usual bland suggestion that there be further scrutiny; this time scrutiny of the process of decision making related to case handling.

The effect of the amendments is to remove any criticism of individual persons, but to leave the criticism of the society as an entity.

The first version contained a paragraph defining it as being a serious situation if, in each case, all facts, observations and opinions are not shared, discussed and considered. There is a statement that decisions in each case in a social work agency must be made on a consideration of that case individually and not solely on the basis of an overall philosophy. That paragraph concluded as follows:

"In view of the evidence given to us, our opinion is that the family service supervisor failed to consider other opinions and made the decision to return Kim without adequate evidence that she would be safe. In fact, on the contrary, there was considerable evidence that this was still a high risk home at the time the decision was made to return Kim home and continued to be so."

These two sentences form a strong statement by the Committee of their opinion of Mrs. Harvey's performance in her position. Not only did she fail



to consider other opinions and decide to return Kim without adequate evidence that she would be safe, but, even more critically, she did so in the face of considerable evidence to the contrary.

That opinion is not expressed in the second version. The Board of Directors of the Society, if they depended solely upon the written report furnished to them, were deprived of that expression of criticism of the procedures used and the decision made by Mrs. Harvey in relation to Kim. They were also deprived of the Committee's comments upon the need for discussion of each case individually to share facts, observations and opinions.

Each version then contained a lengthy paragraph. The differences between the two versions appear to me to be of no great significance. The paragraph contain some general comment upon some specific factors in Kim's case. They include a statement that the Committee interpreted the recordings in the Society's file as indicating a superficial quality of "the relationship and understanding," presumably between Mrs. Lo and Jennifer Popen and Annals Popen, and a naivete in dependence upon the Parent Effectiveness Training Course. A number of "more specific indicators" were mentioned. They were incidents or comments mentioned or made in those recordings. The last of those indicators was the recording under date of July 26, 1976 that the Society would seek a supervision order for various reasons, including a statement that "the home situation was not stable enough."

In the first version the discussion of decision making led to a substantial paragraph about the authority structure in the Society.

It contained comment upon the degree of case control assumed by the Family Services Department. Opposition to any decision by Mrs. Harvey, who "had the final word," was said to have been regarded as a personal affront.

The Committee set forth their views as to the procedure to be followed in the event of any difference of opinion. That included discussion, seeking of further opinions and, if necessary, consultation with "the final authority," the Local

Director. The Committee wrote that none of that was done.

They wrote of being told of Mrs. Harvey's "misuse of authority." They heard of it so often that they gave credence to what was told to them.

They commented upon Mr. Lovatt's reluctance or inability to deal with that situation.

They wrote that, while Mr. Lovatt might not have known the facts of Kim's case, since he would rely upon Mrs. Harvey to keep him informed,

"certainly he could not avoid knowing of the strains brought about by [Mrs. Harvey's] assumption of authority."

That entire paragraph is omitted from the second version. By the amendment those who would read and rely upon the Farina Committee's written report were deprived of some relevant comment by the Committee upon the structure of the Society, Mrs. Harvey's alleged abuse of authority and Mr. Lovatt's failure to act to correct the situation.

Each version then contains a statement of the Committee's concern that Kim's infant brother was left in the family home for some days after her death under certain arrangements for his care.

In each version of the report the Committee wrote of their concern about the lack of involvement of the Society with other agencies and services in the community. In the second version the comment was unnecessarily diluted by addition of the adjective "apparent" so that what the first version described as "the lack of involvement" of the Society became "the apparent lack of involvement."

I have expressed elsewhere in the Report my finding as to the insular position adopted by the Society and its failure to communicate with others to seek or furnish information or assistance.

In those paragraphs the Committee wrote of the onus upon the Society, who bear the prime responsibility in any case of suspected child abuse.

That would require the Society to convene meetings, at frequent intervals and at points of decision in case management, of all persons in any way connected with the case, whether within the Society or in some other capacity. The Committee wrote that in Kim's case regular conferences did not occur. They wrote that in Kim's case any sharing of information "seemed to happen on an individual and almost casual basis."

In each version the paragraph concluded with a sentence that the decision to return a child in a risk situation is too crucial to be left with one or two individuals.

Each version of the report then contains comment upon the qualifications and training of the staff of the Society. Reference is made to Mrs. Lo's lack of social work qualifications and experience. They also mention lack of knowledge, on the part of Mr. Carter and Mrs. Harvey, of the authority and rights of the Society. In the first version the sentence was extended to include "interference of the lawyer [Mr. Higgins]" as an example of their lack of knowledge. In the second version that extension became a reference to their lack of knowledge "in relation to the Society's role with the courts."

The Committee commented in both versions upon programmes of training and continuing education and some unusual difficulties therein in the Society resulting in tensions between groups of the staff.

The paragraph concludes:

"We must ask why this situation has been allowed to develop."

The concerns mentioned in that paragraph led the Committee into discussion of the role of the administration of the Society. The corresponding portions of the two versions are similar, but contain variations of expression and emphasis.

In the first version they wrote of comments by staff members that Mr. Lovatt failed to exercise his authority or to give leadership to the staff so that his role was usurped by Mrs. Harvey who lacked authority to act as administrator.



In the second version that was reduced to indicate that, in this connection, staff members commented only upon Mr. Lovatt's "lack of leadership and direction."

In both versions the Committee wrote that the staff complained that Mr. Lovatt's lack of firm leadership and control resulted in a sense of frustration and abandonment.

In the first version the Committee expressed surprise at the lack of clear procedural directives and written guidelines. In the second version there was no mention of surprise.

In both versions the Committee commented upon poor planning, sloppy practices in the Family Services Department and lack of security of records.

In both versions the Committee wrote of low staff morale and the failure to pursue that problem. The Committee recognized that some tension between departments is usual, but they felt that in the Society the tension was so extreme as to perhaps affect staff members in their work.

In both versions, with minor changes of a word or a phrase, the Committee wrote of being told of very poor relationships between the staff and the Board of Directors, a lack of communication and understanding and even a lack of defined channels of communication.

They noted that the Board of Directors was not informed of Kim's case until it was mentioned in the press in December, 1977.

They wrote of some fear and hesitation of some staff members that to speak with the Committee might lead to reprisals. They wrote that there seemed to be little feeling of loyalty or commitment by the staff to the Society.

In both versions the Committee stated that they would like to think that the events of Kim's case could not be repeated at the time of their report. In somewhat differing language in the two versions they expressed doubt or reservation of opinion upon that. The basis for the doubt or



reservation was that they had been told of the Society's apparent reluctance to act on other cases referred to it. They wrote of two specific cases and gave some detail of one of those cases.

In the first version of their report the Committee concluded that portion of their report as follows:

"If this report is factual (and it can be checked) then we have doubts about the Society's capacity for responsiveness in the carrying out of their mandate, and again of the quality of supervision and professional standards."

In the second version that concluding sentence was replaced by the following:

"The committee recognizes that this was a verbal report and was unsubstantiated by evidence. The case records, however, can and should be checked."

The amendment reduces the force of the Committee's statement that, if a review of the files of the two cases confirmed what had been told to the Committee, they would have doubt about the capacity of the Society to carry out its mandate and about the quality of supervision and professional standards within the Society. What is left is the so usual bland suggestion that the files be checked.

In both versions the Committee stated that the Society did not bear sole responsibility for Kim's case. In the first version they stated that responsibility must be shared "between the Society, the Ministry, the legal system and the community." In the second version they wrote that responsibility must be shared "by other systems which impinge upon the Society".

They wrote that having detailed the role of the Society they would "look briefly at the others," in the first version, or "look briefly at some of the others", in the second version.

In each version there was a portion with the caption "(a) The Ministry of Community and Social

Services." That is followed by a statement that one of the purposes of the Child Welfare Branch of that Ministry is to supervise how children's aid societies carry out their mandate. Then follows a brief extract from section 2(2)(a) of The Child Welfare Act.

It is at this point that the intrusion of the Ministry staff and solicitor into the findings of the Farina Committee is most apparent. The beneficiaries of that intrusion were the Ministry and thus its staff.

In the first version the Committee had written:

"The Ministry did not, in fact, carry out this function during the time of the Popen case."

In the second version that sentence was replaced by:

"It would have been desirable had the Ministry had closer contact with the Society during this period."

The difference is apparent. It is not one of words or expression. It is one of thrust. A forthright clear statement that the Ministry had not carried out one of its duties, a duty imposed upon it by the Legislative Assembly of Ontario, became a meek, innocuous whimper that "it would have been desirable had the Ministry had closer contact with the Society during this period." The second version does not even indicate that the Ministry bore any responsibility for the absence of the "desirable.... closer contact with the Society."

In the first version as it continued its comments under the caption "The Ministry of Community and Social Services" the Committee wrote:

"Another purpose of the Ministry is to provide adequate funding so that an acceptable level of service is maintained."

That sentence does not appear in the second version.

The amendment brought about by the Ministry removed the Committee's statement of its view, that one of the Ministry's purposes was to provide funding adequate for the maintenance of acceptable levels of service by the Society.

The significance of the deletion becomes apparent as one reads on in the Committee's report. In both versions, the Committee wrote of hearing of high caseloads, lack of time and insufficient supervisory staff. In the second version they stated they did not "verify" those statements.

The second version did not contain the comment in the first version that the Society did not retain a solicitor "due to lack of funds." As I view that amendment I recall the testimony of Mrs. Harvey, not the most reliable basis for any definitive conclusion, and of Mr. Lovatt that items in budgets of the Society intended to provide legal services had not been approved by the Ministry.

The failure of the Society to have had the advice of a solicitor in connection with various phases of the handling of Kim's case is discussed elsewhere in the Report. While the Board of Directors did make funds available for that purpose in January, 1976 the Committee's statement in the first version of its report is valid. Until January, 1976 funds were not specifically provided for legal services although such services had been obtained in special instances in the past.

The deletion of that sentence is part of the pattern begun by the earlier removal of the statement of the Ministry's obligation to provide funding adequate to maintain satisfactory services.

In both versions the Committee wrote about the need for appropriate staff qualifications and training programmes. They wrote of their suspicion that Mr. Lovatt channelled his energies into budget rather than service considerations. They noted the absence of an accountant from the Society's staff. They said all of that contributed to low staff morale and decreased effectiveness.



In the second version they spoke of these as being "areas that require further examination, by the Board of Directors and the Ministry."

The overall effect is that a portion of the Committee's report which began in a forthright manner to look at the role of the Ministry ended up as a mild expression of regret that there was insufficient contact between the Ministry and the Society coupled with the same sort of bland suggestion that the Board of Directors and the Ministry examine some areas further.

In the first version the Farina Committee devoted about one page to the responsibility it felt "the legal system" must bear.

Under the caption "(b) The Legal System," they wrote of the number of adjournments and Mr. Higgins' "interference" with Mr. Carter. They felt that though those actions may be "accepted legal practice" they obstructed the Society's handling of the case.

They mentioned the reports in the press containing remarks by His Honour Judge Michael R. Meehan who sat on the trial of Jennifer Popen and Annals Popen for manslaughter in the Court of General Sessions of the Peace at Sarnia in December, 1977. It was those reports which brought Kim's case to the attention of the Board of Directors of the Society and to the attention of the public. They opined that Judge Meehan might have expressed his concerns through a "more appropriate channel."

The second version contains no such caption as "The Legal System" nor does it contain any of the comments which appeared under that caption in the first version.

I am unable to understand the reason for the amendment. In various chapters of this Report there are comments which are directed to some of the same areas of concern. Witnesses testifying upon the Inquiry spoke of the desirability for speed of process in the management of cases in the child welfare field. That included legal process. Even in the second version of their report the Farina Committee wrote of their concern about the qualifications and



knowledge of the staff of the Society. Part of those concerns related to a lack of knowledge of the rights of the Society "in relation to legal representatives of clients" and a lack of understanding of "their role in relation to the court."

The manner in which the Society's application and the charge against Annals Popen and Jennifer Popen in the Provincial Courts were conducted and the way in which the staff of the Society and others acted in relation to or in consequence of those proceedings are relevant to any consideration of Kim's case and the manner in which it was handled by the Society.

If the Farina Committee wanted to comment thereon, as they did, for otherwise they would not have so written in the first version of their report, they should not have been dissuaded therefrom by a cautious official of the Ministry.

The "legal system" is not so tender or fragile that it cannot withstand fair comment. The comments in the first version were fair although they might have reconsidered their use of the word "interference" in relation to Mr. Higgins' actions on behalf of his clients. What he did to keep Mr. Carter from Annals Popen and Jennifer Popen became "interference" only because Mr. Carter and Mrs. Harvey permitted it to "interfere" with what the Society should have been doing for Kim.

In each version of the Committee's report under the caption, "The Community", lettered "(c)" in the first version and "(b)" in the second version, the Committee wrote that

"the community must also share in the responsibility for the death of this child."

They then wrote of the Board of Directors as representatives of the community. They wrote of a lack of interest in the work of the Society and of the failure of citizens to report child abuse.

Under that caption there was a short paragraph in the first version which was not placed in the second version. It was as follows:

"The derogatory appellation 'child snatchers' is well known to CAS staff, and in an effort to encourage the community to use their services, societies generally have reacted by being hesitant to apprehend children, and having apprehended, to re-uniting them with their families as soon as possible."

Apart from my inability to be certain as to the meaning intended by the final clause, I do not understand why that paragraph was not written in the second version. The Committee were expressing a view and should not have been deterred. They may have wanted to consider some changes so as to make their meaning clear. But it was a statement that, to overcome a derogatory appellation, children's aid societies generally have reacted in a particular way.

The breadth of the amendments suggested by the Ministry's staff is most apparent when one reads the portions of the Committee's report appearing under the caption "Recommendations".

In the first version there were ten recommendations, the first of which had five components. They were expressed upon almost two and one half pages. They included, in brief, recommendations that the Board of Directors review the administration of the Society, and the competence of supervisory staff and the sufficiency of other staff. The Committee recommended that the Board of Directors and the staff of the Society establish written policies and procedures and seek direction from the Law Society of Upper Canada with reference to the matter of conflict of interest. They recommended adherence to procedures detailed in the 1976 publication by the Ontario Association of Children's Aid Societies entitled "Guidelines of Practice and Procedure in the Handling of Cases of Child Abuse."

Two of the recommendations called upon the Ministry to honour its legislated function of review and consultation and to provide

"on-going consultation of a professional calibre to assist the Society to maintain professional standards of practice."

Two of the recommendations were that

"the Province undertake to investigate the adequacy of funding for the child abuse program and protection services of this Society"

and review

"the present practice relating to use of the courts and the legal system in child welfare cases."

None of those recommendations are set forth in the second version. They are replaced by two short paragraphs. In the first paragraph the Committee state that serious concerns were raised and they recommend that the Board of Directors request the Ministry "to initiate a Judicial Enquiry." In the second paragraph they recommend that the Ministry be requested to provide professional staff to assist the Society pending the results of such an "Enquiry."

The effect of the amendment was to remove the Committee's recommendations which, by their very nature, were critical of the Society, its Board of Directors, its staff, the Ministry and "the Province". They were replaced by a recommendation for a judicial inquiry and for assistance by the Ministry to the Society in the form of professional staff.

As I have noted earlier in the Report, the two versions of the report of the Farina Committee are reproduced as Schedules 2-F and 2-G to the Report so as to show the full context of any portion I have set forth or mentioned.

Having commented upon the two versions of the report of the Farina Committee I wish now to examine their testimony upon the Inquiry.

Their review of relevant affairs within the Society was conducted from the perspective of highly trained, skilled and experienced social workers. They performed their task and reached their conclusions without interference from anyone. Only the second version of their report reflects any outside



influence. Each of them applied to that review and to the formulation of the conclusions reached by the Committee her or his own expertise independently of the others. In assessing the expertise, competence and procedures of the staff of the Society in Kim's case each member of the Committee measured such expertise, competence and procedures against what she or he understood were the standards or levels thereof which would have been standard, acceptable and applicable during the years of Kim's life.

Each of them endorsed the accuracy of the second version of their report even though Mr. Heath, on the advice of the Ministry's solicitor, had refrained from signing it. All of them had signed the first version. None of them were examined in detail upon the contents of the first version. Its existence came to the attention of the Inquiry only in one of the later periods of the cross-examination of Mrs. Farina. A copy of that version was not immediately admitted as an exhibit. Questions about it were general in nature. Mrs. Farina testified that the amendments to the first version of the report were "extremely minor" and "the substance of the report was in no way altered or changed." I presume that both Mr. Heath and Mr. Petersen shared that opinion.

I have already expressed my opinion that the amendments were significant and did affect their report. The amendments removed or diluted almost all criticism of the Ministry. They removed or diluted some expressions of the opinions of the Committee and some of their criticism of the qualifications and expertise of the staff of the Society.

I accept Mrs. Farina's explanation that she had some concern that the Committee's report could not remain a "confidential" report to the Board of Directors of the Society. She said that in the first version she "had named names" and she thought "it was probably very good advice to delete those names and refer instead to position." I find that only one name, that of Mr. Higgins, which appeared in the first version did not appear in the second version. Anyone having any knowledge of the case would easily determine the identity of anyone mentioned in the second version even if that person was not named.



It would have been appropriate for the Farina Committee to seek legal advice. Either version of their report might have contained words, statements or innuendos which might have exposed them to risk of civil liability. Unfortunately they did not seek independent legal advice.

The Committee were indiscreet in accepting advice from the Ministry to remove or amend portions of their report in which they commented upon the Ministry. By doing so they exposed themselves to criticism. The Ministry was interested in those portions of the Committee's report. The impartiality and independence of the Committee could be questioned.

As I have already stated I am satisfied that the Farina Committee conducted their review and reached their conclusions, as expressed in the first version of their report, entirely independently and without interference or influence by the Ministry. The first version more accurately and fully expresses their independent findings, opinions and conclusions.

The second version is a weakened or diminished document. It would not have been of much use to the Board of Directors of the Society without the benefit of awareness of the testimony given and exhibits presented upon the Inquiry.

By February 21, 1978, the Committee were aware that the Ministry was already considering an order for a judicial inquiry. On February 23, 1978 the Minister of Community and Social Services advised the Legislative Assembly that he had "decided to hold a judicial inquiry."

By the time the Committee wrote the second version of its report on February 24, 1978 and when that version was presented to the Board of Directors on February 28, 1978, the first recommendation in it was anticlimactic. There would be no point in requesting the Ministry to do something which the Minister had already announced was being done.

The concerns of the Farina Committee were well justified.

As they found, the records and documents of the Society were not consistent and reliable.

As they found, the handling of Kim's case by the Society was "seriously inept and... inexcusable," but one would not learn that from perusing the files, records and documents prepared, maintained or retained by the Society.

Explanations for the absence of service to Kim from June 17 to August 31, 1976 were not satisfactory when they were examined during the Inquiry. The Committee were not satisfied with the explanations given to them.

As the Committee found, Mr. Carter and Mrs. Harvey should not have failed to counter Mr. Higgins' actions on behalf of Annals Popen and Jennifer Popen, even if it involved seeking advice and assistance from Mr. Lovatt or from a solicitor or the Court or elsewhere.

It was appropriate for the Committee to have considered Mr. Higgins' position as a member of the Board of Directors of the Society. His position was examined carefully upon this Inquiry.

The delays and other incidents involving proceedings in the Provincial Courts merited comment by the Committee. So too did the presentation of the application of the Society for custody of Kim. Those matters were considered upon the Inquiry.

As the Committee found, the entire management of Kim's case was unacceptable, from the initial absence of attention from June 17, 1976, to the delays in proceedings in the Provincial Courts, the paucity of appropriate records, the decision to return Kim to her home, the transfer of her case from Mr. Carter to Mrs. Lo and the quality and extent of service to her from May 27 to August 11, 1976.

As the Committee found, the organization of the Society, its Board of Directors and its staff, and the channels of communication and authority within that organization merited review and comment.

As the Committee found, the policies, procedures and practices within the Society were

non-existent or uncertain, incomplete and unsatisfactory.

As the Committee found, the qualifications and abilities of some personnel of the Society were, at best, questionable.

As the Committee found, the relationship between the Society and other agencies and services in the community was not satisfactory. The Society did not involve such agencies or services in Kim's case.

As the Committee found, the overall management of the Society was not satisfactory. There were problems of morale.

As the Committee wrote, Kim's case might not have been the only case within the Society which had the potential for tragedy because of the organization and operational procedures of the Society.

As the Committee found, the Ministry did not fulfill its various obligations under The Child Welfare Act.

As the Committee found, the services of a solicitor were needed by the Society.

As the Committee found, the Society and its personnel are not alone in bearing responsibility for Kim's death. Others share that responsibility with the Society and its personnel.

Mr. Heath, limiting his comment as being applicable only to the events of June 17, 1975, said that the intake work of the Society was satisfactory. From his subsequent remarks I am satisfied that what was done by the Society on June 17, 1975 was only a small part of what should have been done on that and subsequent days to constitute an adequate and complete procedure to effect the intake of a case by the Society.

When asked, he agreed that, having regard to her brief visit to see Kim, Mrs. Saul had given Mrs. Harvey a "rather perceptive" report. In his



opinion Mrs. Saul did not then have grounds to apprehend Kim under The Child Welfare Act.

In reviewing the handling of Kim's case and particularly the period immediately after Mrs. Saul's report to Mrs. Harvey on June 17, 1975, Mr. Heath noted that the Society then had information about Kim's earlier injuries. Some of the injuries had been suffered as early as in March, 1975. He said that as a normal part of the process of investigation and "intake" of the case the Society should have investigated the earlier injuries and their severity and circumstances. That should have been commenced immediately on June 17 or June 18, 1975.

Mr. Heath commented upon the lack of assignment of Kim's case until August 31, 1975 when it was assigned to Mr. Carter. Mr. Heath was concerned that even then, aware that there had been an unaccountable error or breakdown in its practice or procedure, no steps were taken by the Society to develop or amend its procedures to prevent any recurrence of such an error or breakdown.

The lack of assignment in June, 1975 was a very serious mistake by Mrs. Harvey.

Mr. Heath expressed no criticism of the actions of Mrs. Dick at the hospital on August 31, 1975.

He suggested that, generally speaking, child abuse cases should be assigned only to experienced workers. I infer he was not critical of the initial assignment of Kim's case to Mr. Carter in September, 1975, apart of course from his criticism that it should have been assigned in June 17, 1975.

Mr. Heath testified about his review of Mr. Carter's recording in the file for the period August 31, 1975 to February 29, 1976. In the opinion of Mr. Heath, as a professional social worker, Mr. Carter's whole recording "is one of concern and of signals about the adequacy of the mother [Jennifer Popen]."

Mr. Carter's recording forms part of the file in the Family Services Department with reference to Kim's case. That file is reproduced as Schedule 2-E to the Report. The pages were unnumbered, but,



for ease of reference during the Inquiry numbers were placed on the pages each number being circled in red. That is why the transcript of the evidence upon the Inquiry contains references such as "red circled page 7." As reproduced herein those numbers and circles are black. Mr. Heath identified a number of items in that recording as being "warning signals." That portion of his evidence is transcribed as follows:

" ...I gather Mr. Carter was initially involved from August 31st, 1975, to February 29th, 1976,...

Q. Right.

A. ...and in summary Mr. Carter's whole recording of this time period is one of concern and of signals about the adequacy of the mother. I believe he started using such phrases as 'she's a proverbial liar, etc.' This is already...

Q. Can you pick some of those out of the transcript for us. I think His Honour would be interested to know what you as a professional social worker would pick out to be warning signals. Just take your time now.

A. They're primarily contained in, again red circled section, or page 7, where Mr. Carter is indicating that he had caught the mother in lies on many occasions, describes her being as a young, inexperienced 18-year old mother, then expecting a second child. There's a reference to a 7-month old child who died in Jamaica, no cause of death given, very evasive...

Q. The fact that the mother was young and inexperienced, that would be some kind of a signal but not a very strong one I take it?

A. Not a strong signal.

Q. The child...

A. The family background, I think this will come also subsequently, the admission of Mr. Popen to drinking problems.

Q. That's a warning signal?

A. Yes.

Q. The discussion that the mother had with Mr. Carter that another, an earlier baby died in Jamaica.

A. Right.

Q. That would be a warning signal?

A. Right.

Q. Go ahead.

A. The apparent isolation of this mother, she describes herself as not being wanted or liked by the extended family of the husband here in the Sarnia area. The so-called unaccountable blackouts during her pregnancy. Mr. Popen wasn't even aware of this. Initially there was denials even of the pregnancies.

We go on to February 27, 1976 and this is where I think it becomes much more meaningful on red circled 8, she starts talking about the family in Jamaica, you know, her being one of thirteen children and I think she was the third oldest. She walks home at age fourteen and finds her mother has disappeared. Had to quit school at Grade IX to take care of all the younger brothers and sisters, the youngest then being six. She cared for all the children by herself for almost two years. Father described as being very strict. I think the whole background leading up to the reason why she married, I think it's rather serious.

Q. The troubled family environment she had in Jamaica...

A. Right.

Q. ...could affect her personality and her approach to her children?

A. Correct.

Q. And a trained social worker should have been alerted by that, is that basically...

A. Alerted, yes, I don't think one would have absolutely concluded at that point in time that she was a classic case of an abusing mother, these are all signals.

Q. So many pieces of circumstance that eventually described a picture, is that what you're saying?

A. Correct.

Q. You've mentioned earlier that, and perhaps we can find it in the transcript that he referred to her as a 'habitual liar.'

A. It's in the body of the Family Recording on page, red circled 7, towards the bottom.

Q. So that in your review of the dictation and from your interview with Mr. Carter you concluded that there was a lot of circumstantial evidence there pointing to her as a possibly abusing parent?

A. Right."

Thus, even on the recordings in the files of the Society there was ample basis for a qualified social worker to be "alerted," that is to suspect that Jennifer Popen might have been an abusing parent. A social worker so "alerted" should then have been governed accordingly in the handling of the case.

Mr. Heath noted that from Mr. Carter's recording it was apparent that he had had "rather minimal" contact with the Popen family. This was so despite Mr. Carter's responsibility for the preparation of the application of the Society for custody of

Kim. In that regard he was responsible for conduct of the investigation of the case and the assembly of evidence to be presented in the Court.

When asked what Mr. Carter might reasonably have been expected to do to overcome or circumvent Mr. Higgins' restrictions upon or obstruction of his contact with the Popen family, Mr. Heath replied that he would have expected Mr. Carter to approach his supervisor, Mrs. Harvey. If Mr. Carter did not receive an adequate response from Mrs. Harvey, Mr. Heath would have expected him to approach the Local Director, Mr. Lovatt and, if still not satisfied, the Board of Directors of the Society. Again, if an adequate response was not forthcoming, Mr. Heath would have expected Mr. Carter to raise the matter in the Court upon one or more of the appearances at which adjournments were granted.

Mr. Heath was not aware that that was done. I am satisfied that Mrs. Harvey was aware of Mr. Carter's difficulty, but she could not or would not assist him. Mr. Carter sought no assistance elsewhere.

Mr. Heath acknowledged that problems within the Society could have been created if Mr. Carter, not satisfied with Mrs. Harvey's response to his problem of access to the Popen family, had chosen to speak to Mr. Lovatt. To do so he would have had to "go over the head" of Mrs. Harvey, his Supervisor.

Mr. Heath acknowledged that the situation then existing within the Society might have made it difficult for Mr. Carter to approach Mr. Lovatt. Mr. Lovatt had delegated almost all of the operation, except financial matters to Mrs. Harvey. Nevertheless, Mr. Heath felt that in any structure there should be a line of appeal beyond one's immediate supervisor. He said Mr. Lovatt retained some involvement in programme matters and in the making of some decisions.

Thus Mr. Heath felt Mr. Carter should have approached Mr. Lovatt when Mrs. Harvey declined to assist him in overcoming the obstacles and even advised him to abide by Mr. Higgins' strictures.



Mr. Heath had found that the sort of group discussion that might arise from a subordinate taking a matter beyond his or her immediate supervisor did not generally occur within the Society.

Mr. Heath's opinion was that, failing a satisfactory solution by other means, a knowledgeable supervisor would have spoken with the solicitor or court worker for the Society with a view to asking the Court to rule upon the matter. In this instance Mrs. Harvey was both supervisor and court worker. She should have advised the Court of the matter.

Mr. Heath testified that Mr. Carter's recording was "basically a negative report."

Mr. Heath said that the Farina Committee were aware of the "spontaneous meeting" in February, 1976 at which Police Constable Wyville, in Mr. Carter's presence, expressed to Mrs. Harvey extreme concern about the possibility of Kim's return home and spoke the words of tragic prophecy to the effect that if Kim were returned she would be dead within months.

In Mr. Heath's opinion the presentation of evidence upon the Society's application for wardship of Kim was "most adequate." That evidence included the abuse of June, 1975. Mr. Carter had arranged for the attendance of witnesses.

Mr. Heath's understanding of the reasons for judgement expressed by Judge Nighswander when he placed Kim in the care of the Society was that it was:

"an exceptionally strong summation and cautioned...the Society...as to how careful they should be before making any move to return that child to the parental home."

Mr. Heath's testimony in this area concluded as follows:

"...There's no doubt that the caution was there..."

Q. In any event...

A. ...while the child might go home in the future His Honour wanted assurances that the Society would present a plan or be assured in its own mind that the child was adequately protected. It's a strong judgement, it's a strong summation.

Q. So you feel that the fact the Judge in spite of the Society asking for two months, granting on his own six months wardship plus his concern that he expressed in his judgement should have alerted the Children's Aid Society again?

A. Correct."

It is interesting to compare Mr. Heath's assessment of Judge Nighswander's judgement with Mr. Higgins' assessment of it. They are surprisingly similar in tone. Mr. Higgins felt that Judge Nighswander was indicating his desire to hear from Annals Popen in the Court before Kim was returned. In effect he felt that Judge Nighswander meant that Kim was not to be returned to her home without the consent of the Court.

Mr. Heath continued his testimony to discuss what he described as "the lack of adequate transfer" of Kim's case from Mr. Carter to Mrs. Lo. He spoke of differing information received by the Farina Committee from Mrs. Harvey and Mr. Carter. Mrs. Harvey had said she had informed Mr. Carter that the case was to be transferred from him and the reasons therefor. Mr. Carter had said he learned of the transfer "literally...on the run" on the afternoon of the wardship hearing on February 25, 1976 by an almost casual remark by Mrs. Harvey who told him the transfer was made "for ethnic reasons." The Committee were unable to understand that.

Mr. Heath described the usual or recommended procedure for transfer of a case and commented upon the transfer of Kim's case. He said:

"A. In any good Society when a case is transferred for any reason usually a notification is given to the chosen or subsequent worker. It is normal procedure for at minimum the supervisor and the two

staff members, meaning the one who presently has the case and the one assuming the case and indeed if there's a second supervisor, depending on the structure of the agency, the case record is brought up-to-date, it is reviewed by the second worker and that at minimum there would be a case conference to review the goals and objectives, clarify any points, that's for any case. I would suggest in a child abuse case that would even be more formally contracted in terms of the acceptance of the transfer. A review of all the evidence back, and in this case it would probably be the evidence back to March of 1975. Again, had it been proper procedure in an agency such as this size I think it might have tipped the Society off once again, were there other agencies that we should be involved with. In a child abuse case you would normally bring those other agencies in, the original referring agency, and in a case such as this, public health. Perhaps, the family doctor: this wasn't done. I gather the file was just quickly brought up-to-date and handed to the second worker.

Q. With no conference at all?

A. No conference at all."

The only explanation for the transfer given to the Committee was that it was "for ethnic reasons." Mrs. Harvey did indicate that Mrs. Lo would have more time for the case than would Mr. Carter who had a heavy case load. She indicated Mrs. Lo would "relate better" because she was a young mother.

Mr. Heath testified that the Society's files showed that Mrs. Lo visited the Popen home often. Mr. Heath's concern was the nature or structure or purpose of those visits. He expressed it as follows:

" ...It wasn't the amount of visiting that was in question, it was the whole purpose of the supervisory visits. I think Mrs. Lo

might have visited twice a day, and with all due respect I think the same tragic death might have occurred."

Mr. Heath related the problem in those visits to "the decision-making around the assignment to Mrs. Lo, the lack of safeguards...when the child was returned, the lack of proper decision-making leading up to that decision which came in early May 1976."

Mr. Heath was asked to comment upon Mrs. Harvey's testimony to the effect that, even prior to February 25, 1976, she had made up her mind that Kim would be returned to her parents. He responded to that and supplementary questions as follows:

"A. Considering that the Judge hadn't even rendered decision around the wardship, considering all the evidence that was in hand, considering the fact that no plan had been implemented to indicate an improvement on the part of the mother and the father, considering, as I mentioned, some of the beginning danger signals, considering the cautions of Mr. Carter and Mrs. Kirby and I gather Mrs. Cecile indirectly, and the Police Department, I fail to comprehend how she could have been considering a return at that point. I fail to consider even what I would suggest was the short period of wardship that the Society requested..."

Q. Right.

A. ...without setting other safeguards.

Q. Putting it another way, is there any positive reason why she would at that point consider it proper to return the child? Is there any reason why she would be anxious to return her at that stage?

A. It would be beyond my comprehension at that stage."

I am satisfied that Mr. Heath and the Farina Committee have correctly assessed this area of the case. His straightforward comment is deserved.



I share the views he expressed in that series of answers.

Mr. Heath commented upon the handling of the case from February 27 to May 26, 1976. He acknowledged that the Committee's review was limited to an examination of the Society's files, interviews with Mrs. Harvey and a telephone conversation with Mrs. Lo.

Mr. Heath spoke in straightforward language. His testimony included the following comments:

"With all due respect to Mrs. Lo, the impression that comes out of this case record is that, if I could be so blunt, she was in over her head. I don't think she knew what she was coping with. We never got any flavour that aside from a very vague way that she knew why she was going back from one week to the next.

Q. She was a very new worker, of course.

A. Correct. Inexperienced in children's aid work in general...

Q. She had only got --

A. ...and child abuse in particular."

That is as much a criticism of the Society and Mrs. Harvey as it is of Mrs. Lo.

Mr. Heath spoke of the meeting in early May, 1976 and the rationale of the decision made at that time. The Farina Committee gained the impression that Mrs. Harvey and Mrs. Lo had earlier decided that Kim would be returned; the only question remaining when that meeting convened related to the time of that return in relation to the anticipated birth of Jennifer Popen's next child. No one attending that meeting indicated to the Committee that, if Kim were to be returned in the near future, safeguards would be built into the arrangement for her return. Later there was some suggestion that attendance at Alcoholics Anonymous and the Parent Effectiveness Training Course would suffice.

When asked if the Committee had learned if there had been any discussion or consideration of "danger signals" such as he himself had mentioned in testimony, he replied:

"A. If they were considered, again I, with all due respect, at that May 7th meeting they seemed to have been discarded. There was apparently - the child's reaction actually to visits in the office setting and prior to the return home, by this time we have a bit more information about Mrs. Popen's own tragic background as a child in Jamaica. By this time we have in hand, I believe it's another exhibit, a reference to Mrs. Popen in a psychiatrist's letter concerning her husband on the criminal charges before the court, I might be able to make reference.....  
.....  
.....

Q. I think when we rose, Mr. Heath, you were looking at Exhibit, for the record I better put it down again, Exhibit 26, Dr. Curtin's report prepared for the Probation Office when Mr. Annals Popen was being sentenced - prior to his being sentenced on the child welfare charge. Was there something of significance in there that should have indicated a warning?

A. There are two points, and my understanding is that I am positive I read this in conjunction with the pre-sentence report which the Society shared in preparation with George Brouwer, and the two things are without repeating the whole sentence...

'He and his wife are perfectly agreeable that the Public Health Nurse and the Children's Aid visit their home any time in the future to check their treatment of the child.'

Then this is the important sentence:

'Even though all these things would surely minimize the danger in the future I am

really unable to give any opinion as to the likelihood of a repetition at a future date, because I cannot assess in any depth the emotional make-up of Mr. Popen.'

Then there is a short second last paragraph:

'In taking a family history past and personal, again I find it so bland that I have to wonder about the reliability of it.'

That information would have been in the hands of the Society approximately three weeks after granting of wardship, approximately five weeks prior to the conference to return in early May, 1976."

Mr. Heath said that the Committee had reviewed all of this, including the "danger signals," with Mrs. Harvey who said, in effect,

"we knew it was Mrs. Popen who was doing the abusing all along."

Mrs. Harvey did not indicate to the Committee that the withdrawal of the charge against Jennifer Popen created any confusion or misled her.

Mr. Heath said that the report from the Society to the Ministry following the Ministry's request dated April 14, 1976, restated that comment by Mrs. Harvey in a somewhat different way.

The Committee had questioned Mrs. Kirby as to how strongly she and Mrs. Archer had presented their views, the views of the Children's Services Department, at that meeting early in May, 1976. Mr. Heath gained the impression that they felt they should not pursue the matter with Mr. Lovatt. The Committee concluded that it seemed very normal to Mrs. Archer and Mrs. Kirby within the Society that their opinions would be overruled by the Family Services Department and particularly by Mrs. Harvey.

The basis for that approach seemed to be that the Children's Services Department would defer to the Family Services Department because the latter



would have more information about the situation within the family. But Mr. Heath said that, in Kim's case, Mrs. Kirby had been involved in most of Kim's visits with her parents. He said she had recognized "danger signals" and was aware of Kim's negative reaction to her visits with her parents. He felt Mrs. Kirby had "some very valid information." I presume he meant it was information which should have been considered as a factor in any discussion as to whether or not Kim should be returned to her home.

Mr. Heath's opinion, strongly held, was that all opinions should have "equal weight" in a conference considering the return of a child. I do not apply that literally, but I do assume he meant that all opinions should be considered and that an otherwise valid opinion should not be dismissed, ignored or given less weight solely because its source was the Children Services Department of the Society rather than the Family Services Department.

In considering the relationship between the two departments of the Society and the deference shown by the Children's Services Department to the Family Services Department, I note Mr. Heath's testimony that the Farina Committee had concluded that Mr. Lovatt had really delegated to Mrs. Harvey almost all of the operations of the Society and that, in actual case management, Mrs. Harvey was in charge in terms of the Family Services Department. The staff of the Society would surely have been aware of that and would regard Mrs. Harvey as the dominant authority in case management matters.

Mr. Heath was not prepared to agree entirely with Mrs. Kirby's testimony that Kim's reaction after visits with her parents was not necessarily a "danger signal" and might have been a normal reaction to any disruption of her routine. Mr. Heath felt that the incidence of prior abuse would be a factor to be considered in any such assessment as to whether or not Kim's reaction was a "danger signal." Mr. Heath enlarged upon that by mention of the observation as to Jennifer Popen's rather rough handling of Kim and her lack of "any awareness of exactly what she was doing in terms of embracing her child." That observation had been made prior to May 6, 1976 and was recorded.



Mr. Heath also noted the short time which elapsed from March 29, 1976, when Annals Popen was placed on probation, to May 6, 1976, when it was decided that Kim would be returned home before the birth of the next child.

He pointed out that the Parent Effectiveness Training Course on which the Society placed so much weight had begun only ten days prior to May 6, 1976 so that Annals Popen and Jennifer Popen would have attended only one or two sessions of that Course by that time.

He spoke of the scant information available as to Annals Popen's attendance at Alcoholics Anonymous.

Mr. Heath said that the decision to return Kim was made on "the sparsest of evidence". He was too kind. There really was no evidence to justify the decision.

He then moved on to suggest that even if the basic decision to return Kim could be defended, it was not supported by any consideration of conditions or terms which should have been built into it in an effort to protect Kim's safety. He suggested that appropriate safeguards might have included consultation with the family physician, with The Lambton Health Unit and with the hospital prior to Kim's return. That would be intended to ensure that Kim was examined regularly by medical personnel after her return. That was not done. Nor was there any expectation that Kim would be physically stripped and examined by Mrs. Lo. Mr. Heath felt that all of that should have been arranged as a matter of normal and good practice prior to Kim's return so that the Society might be ensured and aware of the co-operation of others after her return.

Mr. Heath observed that the Society's file contained only one reference to contact by the Society with the Probation Service of the Ministry of Correctional Services and those supervising Annals Popen's term of probation. Mr. Brouwer had contacted the Society when he was preparing the pre-sentence report, but thereafter the only contact mentioned was by a telephone call. Mr. Heath thought that telephone call was in mid-June of 1976.

I have examined the recordings in the Family Services Department file which form an exhibit upon the Inquiry. I am unable to find any reference to a telephone call to Mr. Brouwer in June or at any time. In her testimony upon the Inquiry Mrs. Lo said she had telephoned Mr. Brouwer.

Mr. Heath testified that the Committee were appalled to find that, in that telephone call, Mrs. Lo indicated that the Society would be lessening its supervisory contacts when Kim's wardship came up for review in August, 1976.

The Committee understood that Mrs. Lo informed Mr. Brouwer that the Society would be suggesting that the Court terminate its order granting wardship of Kim to the Society. Mr. Heath noted especially that Mr. Brouwer had arranged for Mrs. Maughan to assist him in supervising Annals Popen's term of probation so as to compensate for that lessening of supervision by the Society. Although Mrs. Lo was aware of Mrs. Maughan's role she had not contacted her in any way.

Mr. Heath was asked if there was a lack of communication between the Probation Service and the Society. He replied

"well, that's putting it mildly."

He enlarged upon that to say

"There seemed to be a lack of communication all the way around -- internally and externally."

He said the Society should have been working with the Probation Service, The Lambton Health Unit and the family doctor. There may have been others, but the Society should have worked with "those at minimal."

The Committee found no evidence that any plan for Kim's safety was formulated prior to her return home.

Mr. Heath said that the Society's worker visiting the Popen home after Kim's return should have had no qualms about undressing Kim and examining her for any external sign of injury.

He said that normally a children's aid society having wardship of a child would arrange for periodic medical examinations of that child while the child remained in its care even though the child was living at home with his or her parents. He said that was especially important in any case where there was a history of abuse of the child.

In fairness to Mrs. Lo, Mr. Heath said she would have been expected to see some of the external or visible signs of injury, such as bruises, but not injuries of other types which Kim suffered. In that regard he said that Mrs. Lo should have turned to "allied health services in the community," such as The Lambton Health Unit.

Mr. Heath said that a children's aid society should be careful to call the public health nurse into case conferences so that that nurse might be specifically requested "to supplement, complement, to share with the supervision" of a case involving an abused child.

Mr. Heath stated that

"no children's aid society can do an adequate job generally speaking without the active co-operation and collaboration with its public health nurses."

Mr. Heath noted that the later involvement of The Lambton Health Unit after the birth of Kim's younger sibling came about as part of its normal programme of post-natal visiting. It was not a response to any request from the Society and it did not relate to Kim.

Mr. Heath referred to two portions of the recording in the Society's file. Under date of May 27 to August 4, 1976 in the file of the Children's Services Department he found the following:

"Kim continued to have bad days and good days and there was criticism by the father of the mother if Kim had a bruise which she did occasionally from bumping into things. The bruises were checked and were the usual type for a child of this age. They were both fearful of the child being removed



again by the CAS despite the worker's reassurance that they were doing well."

That was a portion of what Mrs. Harvey had placed in that file after Mrs. Kirby had completed her recording on May 27, 1976. That portion was based on Mrs. Lo's recording in the file of the Family Services Department under date of June 17 to July 6, 1976 where she had written:

"Since Kim was an active child, she often bumped into things and hurt herself. Since Mr. Popen was not happy about it and thought Jennifer should watch her more carefully. He said he did not mind if supper was not ready when he was home from work but Jennifer should see to it that Kim did not get hurt. He was afraid that C.A.S. was going to take Kim again. Several days later I was able to confront Mr. Popen with this, and reassure him that we fully understood children did get hurt accidentally, but he should be practical and realize that Mrs. Popen could not keep her eyes on Kim all the time."

Mr. Heath agreed with counsel upon the Inquiry that Mrs. Lo's recording indicated that, by telling Mrs. Lo of Kim's bruises and Annals Popen's fears, Jennifer Popen was able to manipulate Mrs. Lo so that she became Jennifer Popen's ally to reassure Annals Popen. Mr. Heath enlarged upon that to note that Mrs. Lo had gone further than that and, under date of July 7 to July 23, 1976, wrote:

"On my last visit we talked about Jennifer's fear towards C.A.S. Realizing that I was able to acknowledge her feelings, she honestly admitted it and we spent quite a while discussing the subject. It was indicated that C.A.S. is not asking for either a supervision order when Society wardship expires. I will be visiting on a friendly and supportive basis."

Mr. Heath felt that the mere presence of bruises which appeared to be "normal," to use his adjective, even coupled with the parents' fear of removal of a child by a children's aid society, would



not constitute a danger signal to which the children's aid society should respond in most cases. However, when such bruises and fear are associated with a case in which the child has been abused in the past they do give the children's aid society an opportunity and cause to have the child examined medically.

He pointed out that in Kim's case the Society did not grasp that opportunity. Kim was not examined by a medical doctor acting on the instructions or request of the Society.

Mr. Heath agreed that the Society's supervision of Kim's care from May 27, 1976 until her death was "completely inadequate." That inadequacy of supervision had many features. Mrs. Lo did not properly examine Kim. She did not call upon any other community service or upon a medical doctor to perform a medical examination of Kim. Mrs. Lo had not been instructed to make any such examination or to have it done. /

He then reviewed some other portions of Mrs. Lo's recording in the file of the Family Services Department. They had been initialled by Mrs. Harvey.

Under date of March 18, 1976 she had written:

"He [Annals Popen] had had a psychological assessment done and the result would be sent to the concerned personnel. Due to the fact that Mr. Popen no longer has drinking problems..."

Mr. Heath noted that entry was made even before Annals Popen was sentenced on March 29, 1976 and less than a month following the order made on February 25, 1976 whereby Kim was placed in the care of the Society. He said:

"How they came to that conclusion [that Mr. Popen no longer had drinking problems] with no documentation totally escaped us [the Farina Committee]."

Under date of March 29, 1976 Mrs. Lo wrote:

"Due to the positive results of psychiatry (sic) assessment it would indicate that Mr. Popen was not in need of psychiatric treatment."

That was not Mr. Heath's interpretation of Dr. Curtin's letter, a letter which Mr. Heath described as being "very cautious" and "very non-committing." I share Mr. Heath's assessment of Dr. Curtin's letter. Mrs. Lo's recording is not an accurate summary of that letter and what might flow from it.

Under date of April, 1976, after noting Annals Popen's attendance at Alcoholics Anonymous and his statements about feeling better "because he can control himself now" and his wishes for the future, Mrs. Lo wrote:

"We have spent time discussing background for parents who physically ill treated their children. Such incidents do not necessarily happen to parents who don't love their children. When parents have reached their limit, no matter how much love they have for their children, they usually resolve their frustration and anxiety by falling back on their own background - in this case, severe physical punishment. Mr. & Mrs. Popen believe such a thing will not happen again since now they realise what caused it."

With reference to all of that Mr. Heath said:

" ...There's no indication that they knew what had caused it. I would suggest that the recording and the interplay between the Society and those parents was so superficial I don't know how Mrs. Lo could have possibly come to such a conclusion that the parents were fully aware of the etiology that led to the abuse and were prepared and able to cope with any circumstances in future that would not lead to any other further abuse.

Q. What you're saying is that Mrs. Popen never discussed with them or never admitted

to them that she abused the child and that...

A. Well, she just blandly...

Q. Denied...

A. ...agreed to agree with everything Mrs. Lo said."

I should add that there was no testimony to indicate that Mrs. Lo or anyone else in the Society "knew what had caused it" or had endeavoured to learn its cause.

Mr. Heath felt that a "crucial" portion of Mrs. Lo's recording was to be found under date of July 7 to July 23, 1976. There she had written the following:

"For the last couple of times Jennifer appeared very tired, cold and distant to worker. Jennifer looked very unhappy that she was not able to share it with me as to what was bothering her."

Then followed a sentence I have already quoted and one which Mr. Heath now called "the clincher." It was as follows:

"It was indicated that CAS is not asking for either a supervision order when Society wardship expires. I will be visiting on a friendly and supportive basis."

Mr. Heath's opinion was that, combined with what he had earlier described as lack of meaningful interplay during Mrs. Lo's visits,

"these signals should have said something to her [Mrs. Lo]."

He said Mrs. Lo was naive in her relationship with Jennifer Popen. She missed the danger signals. She wanted to see good in Jennifer Popen. He completed that response by saying:

"...That's the irony of it. I think in her attempt to be supportive and her attempt to

see some good...(tape inaudible) I think she lost sight of the basic mandate of that Society to protect the child."

While he testified upon the Inquiry, Mr. Heath was advised by counsel of portions of the testimony of Mrs. Kuly of The Lambton Health Unit. She had spoken to the Sarnia Police Force in June, 1975 after receiving a report that Kim may have been abused by Jennifer Popen. She wanted to learn if the Sarnia Police Force and the Society were involved. She was told of Mrs. Saul's visit with the police to see Kim. She was told there was no evidence of abuse, but Jennifer Popen and Annals Popen had come in during that visit and were angry and upset. The police told her of an earlier incident in which Kim suffered a broken arm. Thereupon, on June 23, 1975, she telephoned the Society and was informed, she thought by Mrs. Dick, that the case had been assigned to Mr. Carter, a long term worker. She had visited the Popen home because of Mrs. Dick's encouragement to do so.

Mr. Heath said he was not aware that there had been that contact by The Lambton Health Unit. He regarded Mrs. Kuly's testimony as supportive of his opinion that Kim's case should have involved the co-ordinated efforts of the Society and others. He thought that the telephone call to the Society on June 23, 1975 should have prompted the Society worker to whom Mrs. Kuly spoke to go to the case file to ascertain what had resulted from the intake proceedings of the previous week.

Mr. Heath testified that, from the recording in the Society's files, he gained "the very distinct impression" that even on learning of Kim's death the Society "seemed oblivious that it would have been abuse." He said:

"one gets the impression that they indeed might have believed it was an accidental death."

He mentioned specifically Mrs. Lo's recordings under date of August 11 and August 12, 1976. They are as follows:

"Early in the evening, a call was made by Mr. Popen's sister-in-law, Grace Popen,



saying Kim had died of a fall from the patio. Jennifer wanted me to go over. In the meantime, another call was received from Sarnia Police requesting me to go to Sarnia General Hospital. At Sarnia General Emergency I identified the child be to Kim Popen. Later on, as the parents were talking to the detectives, a message was left for the Popen's to call me again if they needed me.

Home visit. Mr. Popen was at funeral home arranging the funeral. Jennifer looked tired and strained. She said she did not sleep at all last night. She stated that the child first fell from her high chair yesterday afternoon and said "hurt! hurt! hurt!" but could not tell Jennifer where it hurt. Since then Kim had been bumping into things as if she was in a daze. The child was seen leaning on her left leg when walking. Judy Vandenberghe said she also noticed the child appeared to be a little dizzy. After supper, Jennifer put Kim out on the back porch, a porch (4 sic) 3 feet high, without any railings, to play. Several minutes later, she found the child had fallen from the patio and was unconscious. Not long after they reached the hospital the child died.

Kim was left with an 18 year old babysitter Debbie Ginn while Jennifer was in hospital having Karie. The only persons Kim had ever been left alone with were Mr. Frances Kameka and his mother. Detectives Ross and (Haye sic) Walters were investigating into this situation."

In passing I note the two changes in the recording which are marked in the above quotation. I have looked at the original document filed. The figure "4" and the name "Haye" have lines drawn through them and have been replaced by the figure "3" and the name "Walters" which are written in pencil without any indication as to when or by whom the changes were made.

More disturbing is that the change of the police officer's name from "Haye" to "Walters"

apparently occurred after the Investigator for the Inquiry had received from the Society photocopies of the pages in the file which remained in the possession of the Society. The Investigator retained the photocopies for the purposes of the Inquiry. The photocopy in the possession of the Inquiry shows only the change of the figure "4" to "3."

That willingness and ability of someone to amend documents and records even during the Inquiry reinforces my assessment that the records of the Society are not reliable. The original document was produced from the Society's files during the Inquiry and was received as an exhibit.

Mr. Heath noted the references to "a fall from the patio," and the statements "[Kim] first fell from her high chair," "Kim had been bumping into things" and "[Kim] appeared to be a little dizzy." The recording does not mention abuse. He said that he understood that at about the same time Mrs. Lo had said Kim's parents would "need an awful lot of support," leaving the impression that maybe her death had not resulted from abuse.

Mr. Heath's observation was that all of that seemed "consistent with the lack of perception all the way through the handling of the case."

Mr. Heath was asked to comment upon the action of the Society relating to Kim's younger sibling after Kim's death. He was not aware of what reports, if any, the Society had as to the established cause of Kim's death. He continued his testimony to say

"but in view of what they did know there was gross hesitation on their part to take action, to bring into care the younger child, Karie."

He was aware that the Coroner, the Crown Attorney and The Lambton Health Unit, whose Director was the Medical Officer of Health, had all involved themselves in the case before the Society apprehended that younger child two days after Kim's death.

Mr. Heath had spoken to Mrs. Harvey about that incident. From her and others he understood she

had felt that there were not sufficient grounds to justify or authorize apprehension of the younger child under The Child Welfare Act.

His own opinion was that there were "most adequate grounds". He said Mrs. Harvey should have acted under that portion of section 19(1)(b) of The Child Welfare Act which states that the expression "child in need of protection" means, inter alia,

"(xi) a child whose life, health or morals may be endangered by the conduct of the person in whose charge the child is."

That was an extension of the lack of perception he had mentioned earlier.

When Mr. Heath was asked to comment upon the contents of the Farina Committee's report his attention and responses were directed only to the second version.

His decision not to sign that version was based on the advice of the Ministry's solicitor and some concern that the Committee's report might, in some way, interfere with or bias the Inquiry which had been announced in the period between the two versions.

In my view the Ministry's solicitor was overly cautious. I cannot see how the Committee's report could any more "interfere" with or bias this Inquiry if it were signed by Mr. Heath than if it were not signed by him. Regardless of any report the Committee may have made it must have been clear that, having reviewed the case for the Board of Directors of the Society, the members of the Committee would be expected to testify upon the Inquiry and to express their findings and opinions.

Mr. Heath fully endorsed the contents of the Committee's report. His testimony enlarged upon some aspects of it.

He testified that from its interviews with members of the staff of the Society, particularly Mr. Carter and, to some extent, Mrs. Kirby, the Committee felt there was, within the Society, a "great ignorance" of The Child Welfare Act.



In his opinion Mrs. Harvey was not sufficiently knowledgeable to present matters adequately in court.

Mr. Heath mentioned some comment by Mr. Lovatt which Mr. Heath felt was in error. That comment was to the effect that, as the Society began proceedings in the Family Court only in September, 1975 to obtain an order placing Kim in the care of the Society it could not, in support of that application, present any evidence of prior neglect or abuse.

I share Mr. Heath's view that Mr. Lovatt was in error in any such comment. Evidence of prior incidents of abuse would be relevant and important upon the hearing of the Society's application.

Thus the Farina Committee found lack of knowledge of The Child Welfare Act and court procedure in four quite senior and experienced members of the staff, including the Local Director and the supervisor of one of the two departments in the Society. That latter was also the Society's court worker.

The Committee's view of Mrs. Harvey's knowledge and expertise in court-related matters is all the more interesting and telling in light of Mrs. Harvey's statement to Mrs. Farina that I have mentioned elsewhere in the Report.

The Society was the only one of fifty children's aid societies in Ontario, with one possible exception, which did not choose to send any staff to a training seminar held in the fall of 1975. That seminar, arranged by the Ontario Association of Children's Aid Societies, was for the court workers of the children's aid societies. It was intended to assist them in their work in court and in matters related to court.

When Mrs. Farina noted that the Society had not responded to an invitation to send someone to that seminar, she telephoned. In Mr. Lovatt's absence she spoke with Mrs. Harvey who stated that no one from the Society would attend. Mrs. Harvey went on, in that telephone conversation, to tell Mrs. Farina that the Ontario Association of Children's Aid



Societies had nothing helpful to offer to the Society.

That was a broad statement. It appears to encompass a broad range of child welfare services. Even if confined only to the particular seminar it related to an area where the Society was woefully weak.

Mr. Heath went on to say that the Farina Committee sensed a general climate about the Society which was not satisfactory. He spoke of everything seeming to be done "on a hit and miss ad hoc basis." He spoke of a lack of proper notes and of regular conferences in preparation for appearances in court. The method of gathering evidence was not satisfactory. The staff were not clear as to "the things they should be aware of."

The Committee gained the impression that, when Mr. Higgins told Mr. Carter not to speak with Jennifer Popen and Annals Popen, the Society simply accepted his dictum and did not consider pursuing the matter.

Mr. Heath's opinion was that a children's aid society does not require the services of a solicitor in every application for wardship. He stated equally strongly that in every contested application for wardship the children's aid society should be represented by a solicitor. That was particularly so in a case such as Kim's. He was confident that any expenditure for such legal services, whether or not it was a part of the approved budget, would not be questioned by the Ministry even if it caused an deficit at year-end.

He said that most children's aid societies now do have a solicitor on staff or on retainer.

Mr. Heath said Mrs. Harvey's approach to Mr. Higgins to join the Board of Directors of the Society was "a highly unusual practice." The Committee was unable to ascertain that either Mr. Lovatt or Mrs. Harvey were authorized to approach prospective members of the Board of Directors.

In commenting upon the criticism of the administration of the Society at page twelve of the

second version of the Committee's report, Mr. Heath explained that the criticism was particularly of Mr. Lovatt, but also was of the supervisory staff.

He said that the Committee received

"a consistent message from all staff, all levels of staff, whether it be family service or child care or clerical staff, about the lack of written policy, the lack of procedures, the lack of direction, the lack of proper communication channels... between departments and departments, between them and Mr. Lovatt and in turn on to the Board [of Directors]. We found frankly a very committed staff, a staff that just seemed to be groping I think for direction."

When the Committee asked for the policy and procedure manual Mr. Lovatt produced for them two documents entitled "Policies in Regard to Family Services" and "Policies for Child Care Services". Those documents have been reproduced as Schedules 2-L and 2-M to the Report. Mr. Lovatt acknowledged to the committee that these documents were "quite out of date" and that "policy statements were being updated." Mr. Heath did not know if the new documents had been prepared in draft form.

Mr. Heath said that these two documents produced by Mr. Lovatt were largely comprised of excerpts from The Child Welfare Act "and then beyond that they say next to nothing." He felt that they might serve as an introduction to something worthwhile.

When Mr. Lovatt gave these documents to the Committee, Mr. Heath thought that Mr. Lovatt had misunderstood the Committee's request. So he asked for the memoranda on various subjects which he felt would have supplemented what was produced. Mr. Lovatt said there were no such supplementary materials.

Mr. Heath gained the impression that any expression of policy developed or adopted by the Board of Directors was mentioned only in the minutes of meetings of the Board of Directors where it remained. Such information was not extracted from the

minutes of meetings to form a clearly identifiable policy statement maintained in a regular fashion.

Mr. Heath testified that responsibility for preparation of written policy statements and procedures in a children's aid society rests largely on the management group composed of the local director and supervisory staff. He suggested that, in a society the size of the Society, the local director is responsible for the formulation of policy statements regardless of the source of the original suggestion. That source could be anywhere in or out of the children's aid society. Once formulated the policy statement would be considered and dealt with by the board of directors.

Mr. Heath said that the Committee was given the impression that the morale of the staff of the Society had been low for some time. In commenting upon the final paragraph on page thirteen of the second version of the Committee's report he mentioned the fear that two clerical workers had when asked to speak with the Committee. He felt the fear of reprisal arose out of the situation of poor staff morale. There had been no suggestion of direct threats of reprisal for appearing before the Committee.

Mr. Heath was asked to explain the first paragraph on page fourteen of the second version of the Committee's report. After the Committee interviewed Mr. Lovatt, they were left with the impression that Kim's was the first tragic death in the history of the Society. Mr. Heath acknowledged that perhaps it was. But in its continuing review the Committee began to hear of lack of direction and lack of procedures. That was general. In specific reference to Kim's case they heard of the absence of certain practices and of practices which were undertaken but "were very sloppy ones."

One member of the staff bluntly informed the Committee that the tragedy could occur again. She supported that statement by documenting a serious neglect case in which the Society had failed to act. That case had arisen after Kim's case. The first call about it to the Society was received in July, 1976 shortly before Kim's death.



When asked to comment upon the references to the Ministry in the Committee's report, Mr. Heath said the Ministry had not picked up or pursued the matter of strained relationships within the staff and management of the Society. That was despite two visits by Mr. Charko of the Ministry's staff. Those visits were supposed to deal with those strained relationships.

In that connection he said that he, as the Local Director of the Children's Aid Society of the County of Huron, became aware of the discontinuation of the visits to children's aid societies by "readers" from the Ministry. There had been no formal notification of that discontinuance.

He said that visits by such "readers" might have been helpful to Kim. Depending upon the subject matter of their visit they might have noticed the failure to comply with the Regulations made under The Child Welfare Act or they might have noticed matters related to her apprehension by the Society or to the process of decision-making in her case. They might have observed the low morale, the dissension and the lack of communication within the Society.

Mr. Heath said that very few of the staff of the Society were aware of what was happening in Kim's case. That implied that not many of the staff could have given the "readers" information on Kim's case.

Mr. Heath spoke of the dependence of the Ministry upon the Local Director of the Society, Mr. Lovatt, for information on a case such as Kim's. He spoke of a visit by Mr. Charko to the Society in late 1977 just before Kim's case became a matter of public knowledge and interest. While Mr. Lovatt or staff personnel had expressed disgruntlement about the Society's not being allowed to speak to a case coming to court, no one identified the case. Mr. Heath felt that, if the Society were concerned about the case and the possibility of adverse publicity, it should have sought aid from the Ministry at once.

It is of interest to note that the disgruntlement related to "a case coming to court." There apparently was no mention of any concern as to the handling and disposition in early 1976 of the



charge against Jennifer Popen and Annals Popen under section 40 of The Child Welfare Act.

Upon the Inquiry the criticism expressed by some of the Society's personnel relate to the proceedings in the Family Court during February and March, 1976. There was no objection to any other matter in any court in late 1977.

In expressing its comments upon the community the Committee did not think that the community of the City of Sarnia and the County of Lambton was much different from other communities in its approach to cases of child abuse and reports of instances of child abuse.

Mr. Heath's assessment of the Society was expressed as follows:

"A. You see, there's no rating where I get the impression that we could categorize societies by A, B, C and D; it was certainly not operating according to the standards, the professional standards that I would have concluded to be adequate."

He felt that something drastic must have occurred within the Society after 1973, if Mr. Mainville, then of the Ministry, found the Society's operation in 1973 to have been satisfactory. Mr. Mainville's testimony upon the Inquiry was to that effect. Mr. Heath knew Mr. Mainville and respected his professional opinion.

Mr. Heath mentioned that Mr. Lovatt, having delegated much authority to Mrs. Harvey, had retained some relationship with some matters of programme and decision-making.

He said that in his opinion Mr. Lovatt, as Local Director, was responsible for ensuring that appropriate conferences of staff were held to enable meaningful discussion of cases.

He felt that Mr. Lovatt was also responsible for resolving any differences of opinion that might arise during or out of any such discussions.

Mr. Heath concurred in what he believed was a recommendation in the Report of The Task Force on Child Abuse, the Garber Report of June 19, 1978, that cases of child abuse should be assigned only to experienced workers.

He was prepared to accept that Mrs. Harvey's observation that Mrs. Lo would have more time than Mr. Carter was a valid factor when considering her assignment of the case to Mrs. Lo.

In his view, Mr. Carter's experience was the key factor and outweighed Mrs. Lo's freedom of time and the other matters Mrs. Harvey had mentioned as having influenced her decision to assign the case to Mrs. Lo.

He observed that, in keeping with a recommendation of the Garber Report, Mr. Carter might have been relieved of some of his more ordinary duties so as to leave him more time to devote to Kim's case.

Mr. Heath was not prepared to accept Mrs. Harvey's suggestion that Mrs. Lo's sex and age were important factors in her decision to assign Kim's case to Mrs. Lo. He felt that the fact that Mrs. Lo had a child of an age similar to Kim's might have created some sort of common bond between Mrs. Lo and Jennifer Popen, but he did not feel that was an important consideration in any question of case assignment.

In Mr. Heath's opinion, "truly close supervision" of Mrs. Lo by Mrs. Harvey might have overcome Mrs. Lo's lack of experience. I infer from his response to examination in this area that, in his opinion, Mrs. Harvey did not provide that "truly close supervision" of Mrs. Lo which might have overcome her lack of experience.

Mr. Heath said that, numerically, Mrs. Lo's visits to the Popen home appeared to be satisfactory. He had been unable to establish the exact number of visits. He had criticism of both Mrs. Harvey and Mrs. Lo in relation to what Mrs. Lo did or observed during those visits and in relation to the interpretation of Mrs. Lo's observations.

Mr. Heath had read Mrs. Lo's recording in the Society's files wherein she wrote of those visits. He had noticed matters which concerned him and which, in his opinion, were indications that Kim might have been exposed to danger. He felt that Mrs. Lo had not recognized the significance of those matters. He was somewhat sympathetic to Mrs. Lo because he felt she "was in over her head...she should never have been assigned to that case."

In his opinion, Mrs. Harvey had made errors in interpreting Mrs. Lo's reports. He believed that good practice would have required Mrs. Harvey to accompany Mrs. Lo on some or all of her visits. That was because of Mrs. Lo's lack of experience and the possibility that she was not recognizing the importance or significance of what she observed in the Popen household.

Mr. Heath did not agree with Mrs. Harvey's view, as stated in her testimony upon the Inquiry, that her ability to pick the facts out of Mrs. Lo's reports made it unnecessary for her to accompany Mrs. Lo on any visit. He said Mrs. Harvey was in error in deciding that Mrs. Lo's oral reports and her recordings in the file were sufficient.

Mr. Heath testified that Mrs. Lo's written recordings contained enough material to cause an experienced social worker to be very concerned about the case.

He was asked to transpose himself in time and position to become a supervisor of the Ministry examining Kim's file in July, 1976. From that perspective he made several observations.

He observed that there was no indication that Kim had been medically examined since her return on May 27, 1976. As a supervisor, he would have inquired as to whether she had been so examined. If she had not been so examined, he would have arranged for it immediately. If her parents opposed such examination, he would have wanted the case to be reviewed by the Court at once.

He observed the recording of Jennifer Popen's family background and Annals Popen's involvement with Alcoholics Anonymous. He noted the absence



of any safeguards built into the decision to return Kim to her parents. That would have caused him, as a Ministry Supervisor, to meet with Mr. Lovatt and Mrs. Harvey, as Local Director and Supervisor, respectively, to review the whole handling of the case and to provide some immediate and adequate protection for Kim.

As a Ministry Supervisor, he would have been concerned that Kim's was perhaps not the only case in the Society which was being handled inappropriately. He would have wanted to review the files of some other cases involving abuse to satisfy himself on that point. He regarded such cases as being "high risk" cases. If that sampling of such cases indicated that the same type of operating practices were employed in cases other than Kim's, he would have embarked on a larger review of the Society and a programme to correct the situation.

That review and corrective programme would involve the Local Director and Supervisors. Mr. Heath, as a Ministry Supervisor, would have involved the Board of Directors of the Society only in the most extreme instance of refusal or failure by the Local Director and Supervisors to act responsibly in connection with the review and corrective procedures.

This led Mr. Heath into a discussion with counsel as to the role of the Ministry and the application of section 2 of The Child Welfare Act.

He acknowledged that there had been a lack of field visits to the Society by the Ministry's personnel during and shortly before the years of Kim's life.

In his view the Ministry was not required to examine the file of every case in the Society.

He conceded that the Ministry may have failed to fulfill its obligations to the Society in that it failed to ensure that the Society did have a method for the supervisory staff to monitor case handling. He felt that, even if the Society did have such a method of monitoring, the Ministry might have augmented it by reading the files of a number of



cases, randomly selected, so as to ensure that the Society was operating properly.

The Farina Committee had not seen anything to indicate that the Ministry carried out any such inspection of the Society in 1975 or 1976.

The Committee had found that Kim's case had been the subject of only very limited discussion within the Society. Mr. Heath wished there had been more discussion between the two departments of the Society and with Mr. Lovatt actively involved therein. He felt such discussion might have put the case in a different perspective.

Mr. Heath felt that Mr. Lovatt, as Local Director, failed to provide leadership to the Society. In his view leadership required an ability to respond to the concerns expressed by staff members, an awareness of programmes that should be implemented or altered and an ability to communicate and to be an effective advocate to the Board of Directors of the Society and to the public on behalf of the defined needs of the Society.

Mr. Heath did not feel that the local director of a children's aid society should be expected to be an expert in all things. But, if the local director lacks expertise in particular areas, special care is then required in the appointment of supervisory personnel so as to ensure that the entire management complement of the children's aid society does have sufficient expertise. The local director would be responsible for the selection and appointment of appropriate supervisory personnel.

Mr. Heath's opinion was that the local director of a children's aid society is responsible for ensuring that the supervisory personnel function adequately and in co-operation.

In Mr. Heath's experience, most communication to the board of directors of a children's aid society is channelled through the local director. The local director is responsible for keeping the board of directors informed of the existence of difficult cases or problems within the children's aid society.

Mr. Heath's opinion was that Mr. Lovatt should have advised the Board of Directors about Kim's case. He felt that Mr. Lovatt should have done so in August or September, 1976.

Mr. Heath said that the Farina Committee had received, from a variety of sources, allegations that the Board of Directors of the Society had not adequately responded to problems brought to its attention over a period of at least five years. This was, in fact, the basis for some of the statements by the Committee in its report to the effect that morale of the staff of the Society was low and that the Ministry should provide immediate assistance.

As an example of concerns expressed to the Board of Directors and not properly responded to by it, Mr. Heath spoke of an interview with Mrs. Mitchell, the former co-ordinator of volunteers of the Society for about three years ending in December, 1977. He said she had encountered difficulties, particularly with Mrs. Harvey and the Family Services Department. She experienced a sense of frustration and she resigned after Kim's case became a matter of public knowledge. She had stated her concerns to the Personnel Committee of the Board of Directors.

Mrs. Mitchell's testimony upon the Inquiry as to her dissatisfaction was similar to what Mr. Heath had understood her to say. In her testimony she spoke of Mr. Lovatt's failure to support her as strongly as she felt he should have.

Mr. Heath felt the Board of Directors of the Society, aware of personnel problems, failed to meet with the staff to consider those problems and possible remedies.

He suggested that, while such a duty is not imposed upon the board of directors of a children's aid society by The Child Welfare Act, good practice requires that the board of directors establish and maintain an efficient system to monitor the operations of the children's aid society and the performance of its staff in their various duties.

Mr. Heath said that one element of such a system of monitoring is the regular compilation of statistical information. Another element would be

examination of comments or complaints from the public or even from members of the staff of the children's aid society.

In addition to such an internal system, the board of directors of a children's aid society might seek a review of its operations by the Ministry or by some qualified organization or person outside the children's aid society.

Mr. Heath was asked to comment upon the transfer of Kim's case from Mr. Carter to Mrs. Lo. He said it was poorly handled, particularly by Mrs. Harvey, who had arbitrarily made the decision and then implemented it. He placed some responsibility on Mr. Carter and Mrs. Lo. In his view there should have been a meeting and discussion of and by Mrs. Harvey, Mrs. Lo and Mr. Carter. He felt Mr. Carter should have insisted that such a meeting be held and, if Mrs. Harvey denied his request, he might have spoken to Mr. Lovatt and, if still not satisfied and if still concerned as a professional social worker, he might have addressed the Board of Directors. In Mr. Heath's view Mr. Carter should have raised the issue and pursued it to a satisfactory conclusion.

Mr. Heath discussed the meeting of February 19, 1976 during which Mr. Carter and Mrs. Kirby, with Police Constable Wyville and Police Constable Charlton, expressed to Mrs. Harvey strong opposition to the suggestion that Kim be returned home. He said Mr. Carter and Mrs. Kirby acted properly in voicing their concerns at that time. He felt they should have sought Mr. Lovatt's intervention.

Having read Judge Nighswander's reasons for judgement upon the Society's application for custody of Kim, Mr. Heath expressed some concern that Kim was returned to her parents so shortly after those reasons were pronounced. Mr. Heath, like Mr. Higgins, had taken Judge Nighswander's judgement to mean that the matter should be returned to the Family Court before Kim was returned. The reasons for judgement did seem to contemplate the possibility that Kim might be returned to her parents.

The relevant portion of the reasons for judgement is as follows:



"we have no evidence before us of what Mr. Popen had done, if anything, about his alcohol problem, and I am definitely going to note that he must give evidence that he has done something and that it is succeeding, before the Court will permit the child to return to its parents. This does not necessarily mean that the child will not be with its parents for a further six months, but simply means the Children's Aid Society have control for that period of time..."

Mr. Heath was aware that the practice surrounding the return of a child varied from jurisdiction to jurisdiction and from judge to judge. He was not aware of the prevailing practice in the County of Lambton.

He testified that he was aware of conflicting opinions as to whether a children's aid society can retain wardship of a child after returning the child to his or her parents.

Mr. Heath regarded Judge Nighswander's reasons for judgement as clearly showing his desire that he wanted safeguards built in to ensure Kim's protection in the future. He felt Judge Nighswander was concerned that the testimony as to what had happened to Kim did not correspond with the nature and degree of the injuries she had suffered.

When cross-examined upon his opinion that on August 11, 1976 the Society had ample grounds to justify its taking Kim's younger brother, Karie, into its care, Mr. Heath said he had taken children into care under similar circumstances. He felt that if there were doubt as to whether a child should be apprehended, the children's aid society should apprehend the child and present the appropriate application in court. In that regard, he spoke of doubt as it related to the protection of the child if left in the home in all the circumstances known to the children's aid society.

Mr. Heath acknowledged that the Farina Committee had not found any evidence that the younger child, Karie, had been abused or maltreated. Relying on the expression "may be endangered" in section 20(1)(b) (xii) of The Child Welfare Act, he felt that



Karie should have been taken into care by the Society as a safeguard. His opinion that Karie might have been endangered would have been based on the prior injuries to Kim and the earlier announced intention of the Society to apply for an order enabling it to supervise Kim's care. Personally, he felt that, apart from whatever happened on or shortly before August 11, 1976 to cause Kim's injuries, had Kim survived, the application for an order of supervision might have been enlarged so as to be referable to Kim and the younger child.

Mr. Heath testified that even if, on August 11, 1976, he had felt that Kim had died as the result of an accident, he might nonetheless have considered apprehending the younger child. He would then have immediately commenced an investigation and inquiries of appropriate authorities, including the pathologist conducting the post-mortem examination of Kim's body. Mr. Heath felt that the Society should have immediately inquired of the police, the coroner and the hospital to learn the circumstances of Kim's death. He felt that, if abuse was indicated as a factor in Kim's death, the hospital would have been required by law to report that fact to a children's aid society or Crown attorney.

Mr. Heath's testimony was that social workers are placed in a dilemma in child abuse cases. They are required to be "appropriately supportive" of the family, but, at the same time, they must be alert to the possible presence of abuse of a child and the possibility that the child will be removed from the home.

In his opinion Mrs. Lo had been overly supportive of Kim's parents and had not provided a sufficient element of authority in her dealings with them. She seemed to have lost sight of the need to be alert to protect Kim from further abuse.

Mr. Heath acknowledged, as I think did all expert witnesses to whom such a question was put, that children suffer bruises in normal activities. He said some parents to whom a child has been returned after having been removed by a children's aid society do fear that the child may be removed again if he or she suffers any further bruises.

In Mr. Heath's view there was an "appalling lack of communication" among the various social work agencies in Sarnia, including doctors and public health authorities. His experience in other communities was that there had traditionally been fairly close liaison between public health authorities and children's aid societies. He had not observed a similarly close liaison between medical doctors and children's aid societies. He felt that medical doctors hesitated to report incidents of child abuse, but, he said, a closer co-operation by medical doctors began to develop about 1975.

That testimony was followed by his observation that, in 1975, the Ministry had inquired of children's aid societies and sought to learn how they dealt with cases of child abuse. At about that time the Ministry began to explore the role of the Ministry's Central Registry of child abuse cases.

Mr. Heath testified that in 1978 there was a much greater awareness of child abuse than there had been in 1975. He said knowledge of child abuse and of its detection and handling is growing year by year, but the basic practices of administration and case management, in terms of danger signals, detection and co-operation with other agencies, remain quite constant.

In Mr. Heath's opinion, any social worker employed in the protection of children during the ten or fifteen years prior to 1978 would have had some awareness of child abuse. He would have expected a social worker to be aware of "the battered child syndrome." In his opinion simple acquisition of a Master's Degree in Sociology would not necessarily imply awareness of that syndrome.

Mr. Heath said that when Mr. Allen enlarged the terms of reference of the Farina Committee on January 25, 1978 he expressed, in a general way, concerns which the Society had had for some time with reference to its operation and Mr. Lovatt's role. Mr. Allen had spoken of concerns that the Board of Directors had not received "a true picture of the operation of the Society." He also had expressed concerns about relationships between the staff association and the management of the Society.

Mr. Heath felt that those concerns arose from what members of the Board of Directors had observed "about the management of the Society" and what was expressed to the Board of Directors as a whole by members of the community and by employees of the Society. He said Mr. Allen had felt there had been a poor relationship between the Board of Directors and the staff in relation to service items as well as financial matters.

Mr. Heath testified that the Farina Committee quickly realized that in the time allotted to them for their review they could not fully and adequately examine all of the matters mentioned to them by a member of the Board of Directors and by the staff of the Society. These matters included the absence of written policies and procedures and problems and frustrations of staff.

An example of such frustration was Mrs. Mitchell's comment that the Board of Directors had not properly dealt with the resignation of group home parents. She had commented upon the misuse of volunteers, particularly in the Family Services Department, and Mr. Lovatt's failure to confront the issue. She had spoken of the lack of direction and the absence of a formal procedure to enable her to present her complaints and seek some resolution of them. Mrs. Mitchell's complaints had not come to a head until Kim's case became the subject of public comment.

Mr. Heath felt that Mrs. Mitchell had extended the role of volunteers within the Society. Traditionally volunteers served as drivers. Mrs. Mitchell and the Society asked volunteers to assist in some cases, perhaps to instruct a mother in home-making skills or to assist in budgeting or in the programmes of mother's groups.

Mr. Heath said that, for a volunteer programme in a children's aid society to be successful, the volunteers must be carefully recruited and then very carefully placed. He felt that the respective roles of the volunteer and the social worker assigned to work together should be well defined and known to both. He felt that the role of volunteers was important and that volunteers were entitled to receive respect within the children's aid society.



The Farina Committee formed the impression that in the Society, and especially in the Family Services Department, volunteers were not receiving appropriate recognition or respect, particularly from management.

Mr. Heath said that proper placement of volunteers was important to the clients of a children's aid society as well as to the volunteers and the social workers. Ongoing review of placement would be essential because of changes which develop in relationships between or among individuals.

Mr. Heath testified that the Farina Committee had concluded that there might have been an attempt to mislead the Board of Directors as to the facts of Kim's case.

He referred specifically to a portion of the minutes of the special meeting of the Board of Directors held on December 15, 1977 to discuss Kim's case.

The portions of those minutes mentioned by Mr. Heath are preceded by the following:

"The President, Mrs.(sic) Allen, opened the meeting on the subject of the Kim Popen case and asked Mr. Lovatt, the Local Director to review the salient points of the case history as presented in a written summary form to every Board Member who was present."

Mr. Heath then read from the minutes as follows:

"Mr. Lovatt stressed the following points in a summary of the Popen case to clarify a number of items."

"June 1975, insufficient evidence to warrant intervention on the Society's first contact with the Popens."

"The parents denied any abuse and refused the services of the Children's Aid Society and Lambton Health Unit. The Police accepted a watching brief."



In his testimony, Mr. Heath said:

"I think in other evidence it has come out that is not so."

If that comment relates to the evidence upon this Inquiry, and I think it does, it is correct. The testimony of Mesdames Dick, Saul and Harvey was that on June 17, 1975 the circumstances were such as to merit lengthy involvement of the Society with the Popen family. Members of the Sarnia Police Force who testified denied having "accepted a watching brief" and I prefer their testimony to that of Mrs. Harvey and Mr. Carter in this area.

He then read further from the minutes as follows:

"No. 2. On August 31st/75, a call to St. Joseph's Hospital made the C.A.S. aware of previous injuries to the child..."

His comment on that item was:

"I would suggest that is not so. There was reference to previous injuries on June 17th [1975] at the time of the initial intake."

Mr. Heath is too kind to the Society to regard what was done on June 17, 1975 as being the "initial intake". It certainly was the time when some acts normally associated with the intake of a case were performed by Mesdames Dick, Saul, Hoad and Harvey, but the intake was not completed and the matter lay unattended until it erupted on August 31, 1975 when Kim was admitted to hospital.

Mr. Heath's comment upon that item is otherwise accurate. On June 17, 1975 the Society was advised of earlier injuries to and hospital treatment of Kim.

Mr. Heath commented that the next item setting forth numerous adjournments of hearings in the Family Court and Mr. Higgins' caution to Mr. Carter was true. Upon the testimony presented upon the Inquiry, that is a proper assessment of the item.

He read the next item in the minutes as follows:

"A. No. 4. Mr. Popen accepted full responsibility for the injury received in August, 1975 by Kim Popen since he was drunk at the time, and the mother, Mrs. Popen, was absolved from any guilt. No conviction was registered against Mrs. Popen."

His comment thereon was:

"That's substantially true."

In my view Mr. Heath is in error to regard what was said in the Family Court on February 23, 1975 as constituting an acknowledgement that Annals Popen "accepted full responsibility" for Kim's injuries. A reading of the transcript of the proceedings on February 23, 1976 reveals how Mr. Higgins' comments on behalf of Annals Popen were really devoid of acknowledgement that Annals Popen knew how Kim was injured.

Mr. Heath read the next item in the minutes as follows:

"Since August, 1975 considerable evidence had accumulated on Mr. Popen's behaviour. He had ceased to drink and also attended Alcoholics Anonymous."

His comments on that item were:

"I would be hard pressed to put that in the context of when that was supposed to refer to, because some of the decision-making that I believe was commenced there was no documentation as to his ability to handle an alcohol problem. We were certainly not presented any evidence regarding his attendance at A.A., etc. So that may or may not be misleading."

That comment by Mr. Heath may be valid, but it is overly generous to the source of the item.

If the item relates to the period from August 31, 1975 until February 23, 1976, it is misleading. During that period, with some minor exceptions at the beginning and near the end, Mr. Carter, the only worker of the Society engaged in the case, other than Mrs. Kirby who was concerned solely with Kim's personal care, had been unable to carry out tasks he would normally have carried out. He had virtually no contact with Annals Popen. He had no information as to Annals Popen's behaviour or involvement with Alcoholics Anonymous.

Judge Nighswander on February 25, 1976 in his reasons for judgement noted the absence of evidence "of what Mr. Popen has done, if anything, about his alcohol problem."

Even if the item relates to a longer period, until May 6 or even May 27, 1976, the information obtained by the Society as to Annals Popen's behaviour and attendance at Alcoholics Anonymous was scanty and unreliable.

In my view, in the context of all of the testimony upon the Inquiry, that item in the minutes was misleading.

Mr. Heath then read further from the minutes as follows:

"6. On instructions from the Court, Mr. Popen was examined by a psychiatrist. The forthcoming reports were positive and concluded as follows, 'In summary then if Mr. Popen stays totally away from alcohol and attends whatever courses Mrs. Harvey or the Public Health Nurse might set up, and Parents Anonymous, if a branch of this were available locally, it would surely minimize the danger of the child being battered in the future.'"

He then commented as follows:

"I would suggest that the whole paragraph, when we compare to the exhibit of the psychiatrist yesterday, is misleading in that the psychiatric testimony was decidedly qualified, and it was a far more cautious

statement than what appears to be a very positive statement here."

Mr. Heath's comment is fair and correct. The item is misleading when read without knowledge of the testimony upon the Inquiry and without knowledge of other portions of Dr. Curtin's report.

After reciting a number of things told to him by Annals Popen, Dr. Curtin had written as follows:

"Even though all these things would surely minimize the danger in the future, I am really unable to give any opinion as to the likelihood of a repetition at a future date, because I cannot assess in any depth the emotional make-up of Mr. Popen. He denies ever having been abused himself as a child, and in fact, my enquiries from him yield such little abnormality that I wonder about his reliability as an informant.

I would think therefore, that a more accurate assessment of his emotional state will likely result from objective enquiries rather than from any enquiries I might make from himself or his wife.

In taking a family history past and personal, again I find it so bland that I have to wonder about the reliability of it."

That portion of Dr. Curtin's report is followed by the portion of his report which is quoted in the item numbered 6 in the minutes.

Anyone who read that item numbered 6 in the minutes would be misled unless he or she read the whole of Dr. Curtin's report.

Mr. Heath continued his testimony by reading from the minutes and interpolating as follows:

"7. Lambton Health Unit nurse and probation office have confirmed that nothing was observed which led them to suspect abuse. The probation officer visited on August 11, 1976 and saw only a



sore lip. Mrs. Popen informed...'that she had seen the Doctor for this on the previous Friday.'"

His comment on that item was:

"It's true that for the health unit nurse and the probation office to have phoned the Society and confirmed that nothing was observed for them to suspect abuse may be true in one sense, but as the agency, who had guardianship of this child, I think the primary responsibility was on the Society to in turn have had previous contact, if not up to this point in time, to have had previous contact with those two agencies to work out a plan around mutual supervision and to insist that any indication of abuse would be reported to them and that the matter be conferenced. With all due respect, the impression is left here that there perhaps had been regular contact and inasmuch as they did not hear from those two agencies, they must presume that things were well, and that is not so."

That is a fair and correct comment. In various parts of this Report I comment upon the self-imposed isolation of the Society from other agencies and institutions in the community. The Society failed to assume its proper role of seeking and organizing the support and assistance of others in the performance of its various tasks. That isolation and failure are not indicated by the item in the minutes.

Mr. Heath continued his testimony and read from the minutes and interpolated:

- "8. At the time when the decision was made to return Kim home on May 27, 1976, we had the following information on file:
  - a. Parents wanted Kim back and their lawyer would fight for the child's return. We know that.
  - b. Both parents had attended the P.E.T. course and the supervisor of the course had commented favourably on their participation."

His comment upon that portion was:

"As I recollect the commencement or the timing of that course it had barely begun, in the file there is reference to the fact that Mrs. Popen herself commented that the course would be ideal for older kids, and I recollect somewhere that no one had ever informed the instructor as to the background on this particular case.

Q. Yes, that was the evidence.

A. With all due respect to Parent Effectiveness Training (sic), I question whether that was the appropriate vehicle for improving the communication pattern and the handling and disciplining of Kim Popen in her home setting."

That comment is fair and is supported by the evidence given upon the Inquiry, save and except that upon the Inquiry the testimony was to the effect that any comment by the director of the Parent Effectiveness Training Course was after the Course had been completed and after Kim had been returned.

That item in the minutes is misleading.

Mr. Heath continued to read from the minutes as follows:

"c. The parents had cooperated in every way with Children's Aid Society and the Probation Officer."

His comment upon that item was:

"I would have to take that issue with the first part of that."

That comment is well supported by the evidence upon the Inquiry. At least until the latter part of February, 1976, Mr. Carter had been frustrated in his attempts to carry out case work as he might normally have done.

Mr. Heath read the next item from the minutes as follows:

"d. Mr. Popen had stopped drinking and attended Alcoholics Anonymous."

His comment upon it was:

"That may or may not be true. I saw no verification of this on file."

That comment was fair. Even upon the Inquiry there was little evidence upon that point.

He read the next item as follows:

"e. Kim would be returned to her parents at the August 4th, 1976 Court Hearing because of lack of evidence to refute this action from taking place."

His comment thereon was:

"We have in those two or three weeks leading up to the death of the child one phrase stands out in my mind, this home is not stable enough; there was all the discussion back and forth about Mrs. Popen withdrawing and becoming hostile, avoiding. I would suggest that is misleading."

I am satisfied that the Board of Directors of the Society would have been misled had they accepted that item in the minutes. From the testimony upon the Inquiry, there was an abundance of evidence which would have supported an application by the Society to extend the duration of the order placing Kim in its care. It was not a foregone conclusion that the Court would have declined to leave Kim in the care of the Society.

Mr. Heath read the next item as follows:

"f. Children's Aid Society could have returned the child before the new baby was born and re-integrate the family by the time of the child's birth with the willing cooperation of both parents or could hold off until the August 4th, 1976 Court Hearing which would have terminated the wardship."

His comment upon that, similar to the last preceding comment, was:

"There's a presumption that the wardship was going to be terminated. I think we discussed yesterday that one could argue both ways in terms of the timing of the return."

Again I recall the evidence upon the Inquiry which would tend to support an extension of the order making Kim a ward of the Society. There was no valid basis for the statement that the hearing on August 4, 1976 would have terminated the wardship.

In presenting that sort of statement to the Board of Directors, Mr. Lovatt seemed entirely to ignore the fact that the order granted by Judge Nighswander on February 25, 1976 was for a period of six months which would not expire before August 24, 1976. When Kim was returned on May 27, 1976, no hearing was scheduled for August 4, 1976. That date was selected in late July for presentation of the Society's application for an order for supervision of Kim. Until then there was no suggestion of any further hearing.

The second portion of Mr. Heath's comment is fair. Assuming that the decision to return Kim at some time was an appropriate decision and was properly made in all the circumstances, the evidence upon the Inquiry revealed that there were valid arguments to support a decision to effect the return before the birth of Jennifer Popen's next child, and that there were valid arguments to support a decision to delay that return until some time after the birth of that next child.

Mr. Heath read the next item from the minutes as follows:

"g. The C.A.S. made the decision to return the child to its natural parents based on all the best evidence available at the time ..."

His comment upon that item was:



"I would have to question that, I think if they are narrowing it down to all the best evidence available at the time to a matter of a few weeks before, I suggest that's an error. If they're presuming that the period of supervision from February until - excuse me - from May until two weeks or so before the child's death was the period, there are some positives there, but again, I find it totally divorced from the history that they knew went back to March of 1975, and all that had to be considered, and perhaps the most revealing statement that we've heard that decision proved to have unfortunate consequences."

The evidence upon the Inquiry supports Mr. Heath's expression of doubt and disagreement. The evidence upon the Inquiry shows that Mrs. Harvey alone, without prior consultation with anyone, decided that the "working hypothesis" for the management of Kim's case would be that she would be returned. Mrs. Harvey made that decision before Mr. Carter had been able to carry out elementary case work procedure.

Mr. Heath in his testimony said he could not comprehend how anyone could have made such a decision at that stage of Kim's case and on the information then known to Mrs. Harvey.

Mrs. Harvey persisted in that decision over the strong objections of Mr. Carter, Mrs. Kirby, Police Constable Wyville and Police Constable Charlton.

The meeting of May 6, 1976 was convened only to determine the timing of Kim's return in relation to the time of the birth of Jennifer Popen's child.

The organization and procedures of the Society effectively prevented or inhibited any opposition to the decision that Kim was to be returned.

The overwhelming weight of the evidence upon the Inquiry is that the decision to return Kim in May, 1976 was in error and contrary to normal

acceptable standards of social work in relation to the protection of children.

Of all of the witnesses who testified upon the Inquiry, and who had skills and experience in this area, only Mrs. Harvey sought to defend the decision and the rationale behind it. She was a solitary proponent of her own tragic mistake.

On the evidence upon the Inquiry, it is clear that the Board of Directors would have been misled by that item in the minutes.

Mr. Heath testified that, from interviews with members of the staff of the Society, he gathered that many of the staff who attended that meeting were convinced that "the truth had not been told." He made that comment after noting that the minutes of the meeting showed that Mr. Lovatt and Mrs. Harvey had answered questions raised by members of the Board of Directors and of the staff. Those questions had particularly related to

"discrepancies between the newspaper reports on the Popen case and the written summation of the Children's Aid Society file."

Mr. Heath said that even before reading the minutes of that meeting, the Farina Committee had recognized that there were discrepancies between the report to the Child Welfare branch of the Ministry and the contents of the Society's file.

Mr. Heath noted that the minutes of that meeting contained no reference to any suspicion that Jennifer Popen had abused Kim. In the light of the testimony upon the Inquiry that some members of the staff of the Society had had such a suspicion, it was Mr. Heath's opinion that Mr. Lovatt's failure to advise the meeting of that suspicion was "a significant omission" in the presentation of "the facts of the matter."

In my view, Mr. Heath's comment upon that failure by Mr. Lovatt is fair and valid. It is even more forcefully applicable to Mrs. Harvey. She was present at the meeting. She was responding to questions. Upon this Inquiry, she stated her suspicion

as to Jennifer Popen's involvement in the abuse of Kim. While testifying upon the Inquiry, Mrs. Harvey had been asked if, at about the time of Kim's return in May, 1976, she was concerned as to which of Kim's parents was abusing her. Her response to that and supplemental questions was:

"No...I was sure it was Jennifer...I was sure from the very beginning of our contact with the case, that it was her."

Mr. Heath was asked to comment upon the discussions between the Farina Committee and Mrs. Harvey with reference to the hearing in the Family Court on February 25, 1976, upon the Society's application for an order placing Kim in the care of the Society.

He said that the Committee had read Judge Nighswander's judgement before they spoke with Mrs. Harvey. He said it was a "very strong judgement." Mr. Heath had questioned Mrs. Harvey about the limitation to two months of the period of wardship sought by the Society. Her rationale for that submission initially was that Kim had already been in the care of the Society for six months. She had then told the Committee she had met privately with Judge Nighswander prior to the hearing to tell him that:

"she really wanted six months wardship, but would be requesting the two months even though she didn't want two months."

She indicated to the Committee that the request for only two months wardship was "a strategy to appease Mr. Higgins."

Mr. Heath testified that other members of the staff of the Society interviewed by the Committee were not aware of such a "strategy." They included Mr. Carter who, in Mr. Heath's words, was "the primary worker." He said Mr. Carter had no recollection of having had much input into the length of period of wardship to be sought.

When asked if that absence of input indicated "very poor communication between a supervisor, who was acting as a court worker, and a case worker," Mr. Heath replied:

"you're putting it rather politely, I find it appalling."

I share Mr. Heath's opinion of that detail.

When asked to express his views upon Mrs. Lo's involvement, Mr. Heath expressed some sympathy for her because she was given the case when she was "an inexperienced, untrained staff member." That sympathy notwithstanding, he concluded his comment upon Mrs. Lo by saying:

"A. Without sounding entirely sarcastic, I would hope, however, that common sense would dictate with even the most limited knowledge of child abuse that you'd come running for consultation or for supervision when references are starting to be made about perusing. I mean she can't be entirely held blameless. There were these danger signals. I think they should have triggered something in her mind and she again seems to have overlooked them."

I share Mr. Heath's view that, even if allowances are made for her lack of experience and training, knowledge and common sense should have caused her to have greater and earlier concern for Kim's safety.

Mr. Heath was critical of Mr. Carter's handling of the case from August 31, 1975 to February 25, 1976. In part he said:

"...while I gather that as they entered the Court process going right from September 1975 until the wardship in February 1976 I really don't find Mr. Carter going over, at least in August or September, going back to the very things that I would have expected a senior experienced worker to have noticed or asked for, like, what really happened in June, what really happened last March. If he may have done it, it's obvious that he was privy to the presentation of material for Court, but I don't pick up that he did his homework sufficiently in August in preparing himself for the case. At the time of the case transfer to Mrs. Lo, and



this would be a fault I think on the part of Mr. Carter, and particularly Mr. Carter, in the transfer process to Mrs. Lo. There should have been this communication, there should have been this sitting down to discuss the case, and it appears not to have been done; it is just normal practice. It goes on in any agency. It may be very informal, it may be highly structured, but it goes on. It was not done here."

Thus Mr. Heath was critical of the two workers in the Family Services Department to whom duties in Kim's case had been assigned. In my view Mrs. Harvey, as Supervisor, must share that criticism. She was aware of Mrs. Lo's lack of experience and training. She was aware of the deficiencies in Mr. Carter's investigation and preparation of the case. If she did not have that awareness, she should have had it. If she did not have it her performance of her duties is even more shockingly inept.

Mr. Lovatt must also share the criticism. As the Local Director of the Society, he had a responsibility to ensure that the Society was organized or structured so as to ensure that the intake of Kim's case, including investigation of all incidents of reported injury and preparation for Court, was appropriate and that there were proper procedures for decisions at appropriate stages of the management of the case. He did not ensure that structure.

Mr. Heath observed that if an adequate investigation had been begun as part of the intake process immediately after June 17, 1975, the Society would have obtained information as to Kim's earlier injuries in March, 1975.

He said the Farina Committee was unable to determine the exact nature of the intake process of the Society. Having heard the testimony upon the Inquiry, I understand that inability.

Like the Farina Committee, the Inquiry heard of the structure of a short term team and a long term team within the Family Services Department, but there was no testimony to satisfy me that there was an established procedure to be followed to ensure

the orderly intake of a case. There may very well have been a number of things that were usually done when cases were taken in to the Society. But, equally, some of the things which occurred in Kim's case, such as Mrs. Harvey's initial intervention to assume responsibility for Kim's case in June 17, 1975 and her intention to assign the case directly to a member of the long term team, were not unheard of and did not cause any concern to any of the workers involved in June, 1975.

In Mr. Heath's opinion it was incumbent upon the Society to investigate in June, 1975 not only the allegation or suggestion of abuse immediately prior to June 17, 1975, but also the suggestion that Kim may have been abused on an earlier occasion. As Mr. Heath observed, information as to that earlier occasion was readily available from hospital files and medical reports. He acknowledged that disclosure of such information might not have been voluntary by a hospital or medical doctor.

Mr. Heath's opinion was that Mrs. Harvey was responsible for that lack of investigation in June, 1975. He said it might have been done by any one or more of Mrs. Dick, Mrs. Saul and Mr. Carter.

Upon the testimony given to the Inquiry, it is clear to me, as I think it was to Mr. Heath and the Farina Committee, that Mrs. Harvey had relieved Mrs. Saul and Mrs. Dick from any responsibility for further investigation in June, 1975 and, by her failure to assign the case to Mr. Carter, had not placed that responsibility on him or anyone else. Mrs. Harvey alone was responsible for the failure of the Society to proceed properly with Kim's case immediately after June 27, 1975.

Mr. Heath testified that most of the staff of the Society interviewed by the Farina Committee mentioned

"Mrs. Harvey's domineering personality, her aggressiveness, her bluntness."

He said all of that seemed to have imbued the whole of the Society. In his opinion

"it must have interfered in case handling."

He said that Mrs. Harvey's style of supervision

"tended to be rather directive rather than consultative."

He had some question as to whether her supervision contained much of the element of training.

That portion of Mr. Heath's evidence is important in relation to Mrs. Harvey's supervision of Mrs. Lo. An inexperienced and untrained new employee would be amenable to direction and would not likely note the absence of consultation. That Mrs. Harvey directed and that she did not consult is abundantly demonstrated by the testimony upon the Inquiry. That testimony also demonstrated the absence of any element of training of Mrs. Lo by Mrs. Harvey.

Mr. Heath felt that the method of the transfer of the case from Mr. Carter to Mrs. Lo was perhaps indicative of Mrs. Harvey's supervision of the staff. He presumed that, as in that instance, a lot of it was "done on the run" and was composed of a curt statement and no more.

Mr. Heath testified that, as a local director of a children's aid society, he had accepted most of the responsibility for self-monitoring of that society. He relied upon the competence and accountability of the supervisory staff. Supervision was largely his responsibility. The board of directors looked to him for that and for information on the operation of the society.

He was aware of the Ministry's surveys conducted by "readers" from 1971 until 1974. They were concerned primarily with adherence to the Regulations made under The Child Welfare Act and with statistical material. He shared their reports with the board of directors of the society.

In Mr. Heath's opinion, the local director of a children's aid society "should report all issues" to the society's board of directors. That would include reports upon occurrences in programmes, complaints about programmes, unusual expenses, indiscretions of staff, or public criticism of the Society or its staff.



He specifically mentioned that the death of a child in care should be reported to the board of directors whether death was a result of abuse or from natural causes.

He said that controversial items that might have some public notoriety should be brought to the attention of the board of directors. He said that such reports should be made whether or not the local director could defend the society's programme or policy.

Mr. Heath summed up his opinion by saying:

"I think there has to be a great degree of openness and accuracy and honesty with your board."

While he was a local director of a children's aid society, Mr. Heath devised a system whereby, in the event of controversial or unusual matters, he immediately reported to the president, vice president, and secretary-treasurer of the Society. Those officers then determined whether it would be necessary to advise the board of directors. A special meeting of the board would be convened if circumstances warranted it.

On all of the testimony upon the Inquiry, it is clear to me that Mr. Lovatt did not meet the standard that Mr. Heath suggested should be met by the local director of a children's aid society in relation to his duty to report to the board of directors of that society and to keep them informed of such a case.

Mr. Heath's standards are reasonable. Mr. Lovatt was derelict in his duty to the Board of Directors. That failure began in September, 1975, or in August, 1976 at the latest, and continued up to and beyond December, 1977, at least until the Farina Committee reported to the Board of Directors on February 28, 1978.

Mr. Heath testified that when the Farina Committee met with the Board of Directors of the Society, Mrs. Harvey was on sick leave. On completion of the presentation of the Committee's report, Mr. Lovatt acknowledged the need for assistance in



the operation of the Society. That need related not only to supervision of the Family Services Department and the provision of court services, but also to the financial and accounting affairs of the Society, the management of child abuse cases and the facilities for children who run away. Mr. Heath described it as "a real groping for help" in what was perceived to be a very difficult period for the Society.

Mr. Heath said that members of the Board of Directors, gathering informally after the special meeting, seemed to accept the accuracy of the Committee's report, including specifically the reference to the concerns felt by the Board of Directors, particularly from December 15, 1977, as to the accuracy of information about Kim's case presented to them.

He said they were critical of Mr. Lovatt, but at the same time felt some concern for his well-being. He said there was far-ranging discussion as to the future management of the Society and the role or dilemma of Mr. Lovatt, Mrs. Harvey and other members of the staff.

Mr. Heath said he was rather shocked by the expression of some, especially Mr. McPhedran, which indicated that the Board of Directors had had some earlier indications of problems within the Society. Those problems perhaps were not as serious as those indicated by Kim's case, but the Board of Directors had needed something such as the Committee's report to enable them to take corrective action.

Mr. Petersen, the second member of the Farina Committee to testify upon the Inquiry, offered testimony corroborative of that of Mr. Heath with reference to the appointment, terms of reference, methodology, deliberations, conclusions and report of the Committee.

As in the case of Mr. Heath, Mr. Petersen's attention while testifying was directed only to the second version of the Committee's report.

Mr. Petersen confirmed that each member of the Committee received a copy of the recordings and file material relevant to the case and then reviewed those materials privately. Each member relied on her or his own knowledge and skills. On all of the major

issues in the case, there was an uncanny unanimity of findings, but each member arrived at her or his findings independently of the other members. That same sort of unanimity pervaded the Committee's discussions after they had made their findings.

Mr. Petersen felt that the Committee's report, while written by Mrs. Farina, was really a document produced by the three members.

He agreed with Mr. Heath's testimony in respect of what he regarded as danger signals, indications that Kim might have been exposed to risk, which were to be found in the recordings in the files of the Society.

He confirmed that in its review and subsequent deliberations, the Farina Committee had applied standards of knowledge and expertise that would have been usual and acceptable during the years 1975 and 1976. In his opinion, and in his own experience, the criteria applied by the Committee would have been applicable to the review of any case of child abuse arising between 1957 and 1978.

Mr. Petersen testified that the Committee were aware that in those years during Kim's lifetime many children's aid societies did not have formal directives as to the management and handling of cases of child abuse. They bore that in mind as they prepared their report.

Mr. Petersen was questioned about the value to a local children's aid society of the visits of "readers" from the Ministry. He pointed out that the "readers" were not trained social workers. Primarily they were in search of statistical information. They made no judgement as to the competence of the local society and its staff in the performance of duties. They did not examine the details of case management. There was little chance that they would have detected any failure by the local society in some aspect of case management.

There were instances when a supervisor from the Ministry would meet with the local society's supervisory personnel to review the report upon the society following the visit by the "readers" and to

consider any action that might be required to correct any weakness or shortcoming indicated.

Mr. Petersen was aware that the visits of "readers" to children's aid societies had ceased in about 1974 or 1975. That was not done by any formal procedure or prior notification to the children's aid societies. The visits merely stopped and some time later, when a local society, wondering when the next visit would be, inquired of the Ministry, it would learn that the "readers" would not visit.

Mr. Petersen felt that the visits of the "readers" were of value to the management of the local societies. He found that the staff, anticipating such a visit, strove to get recordings and other matters up-to-date.

Mr. Petersen shared Mr. Heath's opinion that a duty lies upon the local director of a children's aid society to keep the board of directors informed about the state of the society. In his opinion it was most important that the local director should inform the board of directors not only of favourable reports or events, but especially should inform them of matters that may reflect unfavourably upon the society or its personnel in any way. Mr. Petersen said that in his experience it was "common practice in most agencies" for local directors to make such reports to the boards of directors.

Mr. Petersen felt that Mr. Lovatt had not kept the Board of Directors adequately informed as to what was occurring within the Society and as to how it was functioning.

Mr. Petersen was aware that, by reason of human weaknesses and personalities or perhaps by reason of differing conceptions of responsibilities and matters, there might be occasions when a local director would fail to inform the board of directors of something which had gone badly for the society.

For that reason Mr. Petersen felt it would be helpful for local children's aid societies to be examined by some external force from time to time. In his opinion, while that would be helpful, the local society still was responsible for ensuring, to itself and others, that it fulfilled its statutory



mandate. He felt the local society should not rely entirely upon review or examination of its operation by an outside force even such as the Ministry. He believed that each local society should have developed procedures whereby it could satisfy itself that it was fulfilling its mandate.

Mr. Petersen said that such a procedure might require each member of the supervisory personnel to carry out regular reviews of the files of the workers reporting to him or to her. The purpose of such a review would be to ensure that the services provided by each worker were "carried out in a responsible fashion according to acceptable standards."

In his opinion it was critical to the success of any such procedure that the local director perform the duties of that office, including supervision of those in supervisory positions. He felt that the local director must be knowledgeable of the duties of that office and of what to expect from subordinates in the performance of their duties.

Mr. Petersen was critical of Mr. Lovatt's delegation of responsibility for provision of services by the Society. The Committee felt that that delegation by Mr. Lovatt to Mrs. Harvey was inappropriate. They felt that, despite such delegation, he remained responsible for the provision of services by the Society and the maintenance of acceptable standards of such services. Mr. Lovatt could not restrict himself to concerns of budget and administration.

Mr. Petersen recognized that in any system of self-monitoring devised by a children's aid society the board of directors would depend upon the local director. In a sense they would be "almost at the mercy of the local director." While a board of directors should not be excused if it did not receive information and did not ask the local director for such information, the board of directors should be entitled to assume that information furnished by the local director is honest and accurate.

Mr. Petersen said he and the other members of the Farina Committee found that the management of Kim's case by the Society was not "up to par." I



infer he meant it was not managed satisfactorily and to the usual acceptable standards.

While the Committee had concerned itself only with service issues related to Kim's case, other matters inadvertently came to its attention. These included Mr. Lovatt's failure to provide leadership to the staff of the Society and its Board of Directors. That became apparent to the Committee from its observation of the Society as a whole and from its interviews with various persons.

Another matter that came to the Committee's attention was the supervision of what Mr. Petersen chose to call the "Protection Department." I infer from the whole trend of the testimony, that he was then speaking of the Family Services Department.

Mr. Petersen believed that a local director is required, as part of the duties of that office, to advise the board of directors of how the children's aid society should fulfill its mandate, of the difficulties that might be encountered and of areas in respect of which policies should be developed or changed. In his experience it is common practice for the local director and other staff, aware of problems or concerns, to make to the board of directors proposals upon matters of policy. Usually such proposals would be considered by a committee of the board and then by the board as a whole.

Mr. Petersen observed that The Child Welfare Act does not contain detailed information upon the day-to-day functioning of the children's aid societies. In his opinion it is therefore incumbent upon each society to develop and maintain its own policies and procedures to direct and govern its personnel in the performance of their various duties.

Those policies and procedures should be set forth in writing, as in a staff manual, and should be reviewed periodically and amended as required. They should indicate the minimum standard of service that will be acceptable.

It is a responsibility of the local director to provide leadership in this area both to the board of directors and to the staff. Thus the local director would have to be aware of current

developments in the field of social work embracing the mandate given to children's aid societies by The Child Welfare Act.

Mr. Petersen found it rather shocking and disheartening that, when asked to produce the policies and procedures of the Society, Mr. Lovatt presented "almost next to nothing."

Mr. Petersen recognized that smaller societies might have difficulty in producing a manual of policies and procedures, perhaps because of insufficient time being available. However, he said all children's aid societies in Ontario have the same mandate; so if one cannot, for whatever reason, produce its own manual of policies and procedures it can obtain a copy of one prepared by another society and use it after making additions, deletions and changes as its own experience dictates are necessary to meet its local conditions.

He felt that a small children's aid society might function without a written set of policies and procedures. That would require the supervisory staff to provide very regular and very close supervision. From the tone of his testimony, I inferred that he did not find that that sort of supervision was given in the Society.

He said that in the absence of written policies and procedures, a worker new to the staff would be totally dependent upon his or her supervisor. In my view that was the situation in which Mrs. Lo found herself in relation to Mrs. Harvey.

Mr. Petersen recognized that information would come to the local director from many sources, including the Ministry. He said such information would not always require immediate amendment of any policy or procedure, but nonetheless it would be incumbent upon the local director to ensure that the information was passed to the staff.

Mr. Petersen acknowledged that because of the difficulties of reducing standards of service to writing it is often necessary for the supervisory staff to express or interpret them orally to the workers.

He felt that since 1976 the memoranda from the Ministry have indicated an increasing emphasis upon standards of service and upon what clients are entitled to expect from social workers.

Counsel invited Mr. Petersen's comments upon various portions of the Committee's report.

With reference to the Committee's commendation of the Board of Directors for having requested the review by the Committee, he said that that action by the Board was an indication it had a responsible attitude and was willing to seek and accept independent assessment and advice. He said that the Board of Directors, through Mr. Allen, offered every assistance to the Committee even though the Board recognized that it too might be the subject of negative criticism by the Committee.

He said the Committee's reference to 1178 children having come into the care of the Children's Aid Society in ten years came about by reason of the wish of the Committee to place Kim's case in an appropriate perspective within the entire operation of the Society. The Committee relied upon Mr. Lovatt for the accuracy of the figure "1178."

Mr. Petersen said that in dealing with abused children there is "a high risk" that, if they are placed back with their families, abuse will continue or recur. He said there is always an element of risk when a child is returned to his or her parents and that risk becomes greater if there is a history of abuse or mistreatment of the child.

In his view, good practice would require that, in the event of a child's return to the family home, the children's aid society ensure that that risk is limited to what he called "a reasonable risk." He acknowledged that determination of whether a risk was "reasonable" involved the application of personal judgement.

He said that a number of social workers considering one case might arrive at a variety of decisions as to whether the risk in that case was "reasonable." Social work is not an exact science; so he suggested that no one could say that any particular one of those workers was correct or wrong.



The Committee was unanimous in their opinion that in Kim's case there was a "high risk" involved in her return to her parents. They were unanimous in believing that no one having the information available to the Society should have made the decision to return Kim.

Mr. Petersen testified that the personalities of the personnel of the Society, as in any organization, had a bearing upon how it functioned. That led him into some comment upon Mr. Lovatt and Mrs. Harvey.

He regarded Mr. Lovatt as a pretty genuine and easy going person, dedicated in his work and concerned about it. Mr. Lovatt was much distressed by what had happened and spoke of resigning at once. The Committee encouraged him to remain because they felt he had something to contribute, particularly in the areas of budget and administration.

Mr. Petersen had known Mrs. Harvey for some years. She had a lot of knowledge in the field of child welfare and had an extremely strong personality. She held strong views in her profession.

Mr. Petersen felt she might reach decisions quickly and be forceful about defending them and resisting any suggestion for change of them. He cited, as an example of that, the way in which Mrs. Harvey had overruled the opposition of Mrs. Kirby, Mr. Carter and police officers to the suggestion that Kim be returned to her parents. Mrs. Harvey gave a telling demonstration of that side of her personality or character when, in her testimony upon the Inquiry, she defended her decision to return Kim to her parent's home.

He thought she would most often arrive at the correct decision and had an ability to get to the heart of any matter.

The Committee were impressed by the dedication of members of the staff, both professional and clerical. They worked hard. They cared for the welfare of children.

The Committee felt that the staff comprised a good basic foundation to enable the Society to



fulfill its mandate, but had encountered problems because of the leadership given to them. In assessing that leadership, the Committee looked at the lack of leadership from Mr. Lovatt and the "misguided" leadership by Mrs. Harvey. They felt Mrs. Harvey was "misguided" in assuming responsibilities and making decisions without consultation with others or without appropriate regard for the view of others.

Kim's case was a tragic example.

Mr. Petersen concurred with Mr. Heath's views as to the need for a process whereby a social worker might seek to change the decision of a supervisor. He enlarged upon that to suggest that the personalities of those involved in the process might affect it. He said that a supervisor should not be upset if a worker sought to have the local director vary or revoke the supervisor's decision. He felt that the supervisor should be alert to the worker's concern and should try to resolve it directly and, if unable to do so, should suggest that they both approach the local director. In his view that sort of approach is important to the maintenance of good relationships between the supervisor and the workers.

Mr. Petersen testified that the Farina Committee found that there were good relationships between the Supervisor and workers in the Children's Services Department of the Society. That sort of relationship did not exist in the Family Services Department of which Mrs. Harvey was Supervisor. The workers in that department were loyal to Mrs. Harvey and found her to be supportive. Mr. Petersen said that the Committee were concerned about the relationship between Mrs. Harvey's department and the rest of the Society.

He said that a degree of friction between departments is common in children's aid societies with a departmental structure. It is the duty of the local director to exert the authority of that office to ensure that the departments overcome the friction and work together for the protection of the children for whom the children's aid society is responsible.

The extent of the rift or tension between the two departments was a real concern to the Committee. That was particularly so when coupled with

the lack of leadership by Mr. Lovatt. Mr. Lovatt had conceded that Mrs. Harvey was a "difficult" person and "he let her more or less do things her way." In the result, the two departments were "out of balance" and Mr. Lovatt was not strong enough to resolve the problem.

Mr. Petersen said that the Committee observed that discipline and practices in the Family Services Department were really in contrast to discipline and practices in the Children's Services Department. On the basis of what was told to them and their own observations, the Committee felt that in the Family Services Department there was not a satisfactory effort to keep the necessary records up-to-date or to record what the workers were doing. In the Children's Services Department the records were maintained satisfactorily in the view of the Committee.

My findings upon this Inquiry in respect of the records of the Society are similar to the views expressed by Mr. Petersen. In virtually every instance in which I have found error or in which I have expressed doubt as to the reliability of the records of the Society, the item or document was found in the recordings or files of the Family Services Department or emanated therefrom.

Mr. Petersen, primarily on the basis of his assessment of Mr. Allen and Mrs. Wood with whom he had greater contact, felt that the Board of Directors of the Society measured up well. The problems of getting members of the Board of Directors to serve on committees was not unique to the Society. He felt the Board of Directors were keenly interested in the well being of the Society and were prepared to do what was necessary to improve it.

He felt that while the Board of Directors, or some of them, had an awareness of some shortcomings within the Society, particularly in relation to Mr. Lovatt and Mrs. Harvey, they were shocked when the Farina Committee reported to them. They were so concerned that some met informally late into the night after the report was presented. They recognized the presence of the problem and the need for immediate corrective procedures.

Mr. Petersen said that in assessing Mrs. Lo's involvement in Kim's case, the Committee placed greatest importance upon her limited social work skills obtained in an academic setting and her lack of training and experience as a social worker. He spoke well of Mrs. Lo as one with the potential to be a good social worker. He said Mrs. Lo received inadequate or insufficient direction from Mrs. Harvey in the day-to-day matters in Kim's case.

That latter conclusion was based on the Committee's assessment of what was told to them by Mrs. Harvey among others. The inadequacy or insufficiency may not have been in the frequency of supervision, but was in the content thereof. The supervision lacked adequate review of Mrs. Lo's observations. It lacked instruction to Mrs. Lo as to what information might be available to her and where it might be found. Mrs. Harvey did not carefully instruct Mrs. Lo as to various elements of child abuse loosely categorized as "danger signals." Mrs. Harvey did not pay enough attention to what Mrs. Lo observed and reported to her. The Committee felt that Mrs. Lo had noted and reported to Mrs. Harvey matters that should have alerted Mrs. Harvey to the possibility of complications and difficulties.

The Committee were informed that the recordings by Mrs. Lo were not transcribed into Kim's file in the Family Services Department until after Kim's death. Thus they assumed that Mrs. Harvey proceeded on oral reports or handwritten notes from Mrs. Lo.

Mr. Petersen felt Mrs. Lo had been in a difficult position. By reason of her lack of training, skills and experience, she could not challenge Mrs. Harvey.

The Committee was told that Mr. Lovatt had elicited Mrs. Harvey's undertaking to supervise Mrs. Lo very closely while she was working on Kim's case. Mrs. Harvey did not deny that by giving that undertaking she assumed responsibility for the management of the case.

Mr. Petersen said it would be preferable to have an experienced worker on a case such as Kim's, but that might not always be possible because of



other circumstances. If such a case is assigned to an inexperienced worker, the supervisor must give close supervision.

In Mr. Petersen's opinion, a person serving as a social worker in a hospital, as Mr. Khattab did, should have had some awareness of child abuse.

In its report, the Committee wrote of the absence of clear channels of communication within the Society. It recognized that Mr. Lovatt did report to the Board of Directors, but there was no clear definition as to what was expected in his reports upon service matters.

The Committee found it to be "glaring" that Kim's case was not reported until after it became the subject of news reports.

Mr. Petersen said that by 1978 members of the public, as well as social workers, were more aware of child abuse than they had been in earlier years. In the same period the Ministry had been providing to the children's aid societies more information and direction about child abuse.

In the information from the Ministry during the latter period, Mr. Petersen found a greater emphasis was placed upon the risk involved in the return of children to their parents than upon the general philosophy of keeping families together or reuniting them.



## Chapter XXIX

### Developments Within or By the Ministry of Community and Social Services with Reference to Child Abuse

In this Chapter I shall call the Ministry of Community and Social Services the "Ministry."

I have expressed strong criticism of the Ministry in relation to the effect which its policies and procedures, its actions and its inaction and its errors and omissions had upon Kim. The Ministry failed Kim. However, perhaps in part as a result of recognition of some of its weaknesses as disclosed or demonstrated during the Inquiry, the Ministry began to seek to improve its facility or ability in relation to child abuse. In writing that last sentence I have fallen into use of the type of expression so common to employees of the Ministry who testified. I have already mentioned their jargon of the type decried by Petronius.

I am satisfied that during all of Kim's lifetime there were in the employ of or available to the Ministry persons who were highly trained, skilled and experienced social workers, knowledgeable in the entire field of child abuse and dedicated to the high principles of their profession. I am satisfied that had those employees of the Ministry been aware of Kim's case the tragedy of her death in August, 1976 might very well have been avoided. I believe that would have been so even if employees with the appropriate knowledge and experience and skills had seen, initially, only the Society's reports to the Central Registry in September, 1975 and April, 1976. Those reports would have caused such knowledgeable workers to make further inquiries. Dr. Herbert Alvin Sohn, whose testimony I review in greater detail later in this Chapter, was shown and given an opportunity to read and consider the reports from the Society to the Central Registry dated September 8, 1975 and April 14, 1976.

Counsel then put a number of questions to Dr. Sohn who responded thereto. That series of questions and answers was transcribed as follows:

"Q. Had you been, in the position in the Ministry to be reading such reports and attempting to advise the local Children's Aid, as indeed the Field Consultants now attempt to do, as on the Child Abuse question here, what if any recommendations would you make - now firstly, would you be in the position where you have some concern reading these reports as to the safety of the child and her being returned to the home.

A. I would have a great deal of concern about the safety of the child.

Q. All right, would you please outline why, having regard to these reports?

A. The first report indicates that this is the third incident in which this child has been admitted to the hospital with fractures and bruises. I would be very much concerned about how many incidents about how many incidents prior to this that were not known to this particular hospital. I would want to know a lot more about what can be found out concerning that family and its relationship, particularly to that child. I cannot find in this report any indication that that has been attempted. Clearly there is a statement here that subsequent action will be dependent on police investigation and parental co-operation. I would think that in addition to the police investigation it is extremely important for a social investigation to have been conducted and a psychiatric investigation with both the mother and father. Unfortunately a psychiatric investigation was done only with the father. Clearly we have incidents, have experience that one parent will try to cover for another parent and clearly reflected in one of the reports here the police expressed that concern that it is

really the mother they should be concerned about rather than the father.

Q. Well then based upon those reports you would have wanted to have been satisfied in a good many more areas than apparently the local Children's Aid gave its attention to before this child would be returned to the home?

A. In terms of what is reflected in these two reports, yes."

Dr. Sohn's opinion so expressed was not unlike that of other qualified persons who examined those two reports and commented upon them in testimony upon the Inquiry.

It is the fault of the Ministry that those persons in its employ were not aware of Kim's case. That fault has many bases. Some of those bases apparent to me were:

1. The Ministry did not employ a sufficient number of such persons during Kim's lifetime and for some time prior to her birth.

2. Because of their lack of numbers those who were in the employ of the Ministry during Kim's lifetime were unable to provide a level of service to children's aid societies sufficient to represent a reasonable or adequate fulfilment by the Ministry of its duties and obligations to and in respect of those societies during Kim's lifetime.

3. The Ministry maintained from 1966 until 1978 a Central Registry of Child Abuse, hereinafter in this Chapter called the "Registry," which was of doubtful value to anyone and was of no value to Kim. That represented an effectively useless expenditure of time and money by the Ministry and by the societies.

4. The procedures relative to the operation of the Registry during Kim's lifetime was such that it was unlikely that such qualified personnel of the Ministry would be aware of the matters reported to the Registry. The reports to the Registry in respect of Kim were not brought to the attention of

any such qualified personnel of the Ministry during her lifetime.

5. Because such qualified personnel of the Ministry were unable to fulfill the Ministry's statutory duty to supervise, inspect and advise the Society during Kim's lifetime they did not learn of Kim's case during her lifetime.

6. Because the Ministry, by a process of attrition, withdrew the service of "readers" to the children's aid societies, no such service was provided to the Society during Kim's lifetime. The slight possibility that such service might have brought Kim's case to the attention of "readers" and thence to qualified persons in the Ministry was removed by the Ministry.

7. The Ministry had not in 1975 and 1976 begun to devote an appropriate part of its effort to the problem of child abuse.

In my view the personnel of the Ministry possessing those qualifications in the area of child abuse should have been aware of Kim's case no later than the day on which the Society's report dated September 8, 1975 was received by the Registry.

If the Ministry had been fulfilling its statutory duties to supervise and inspect the societies in 1975 Kim's case might very well have been known to such qualified personnel of the Ministry long before September 8, 1975. I appreciate that the likelihood of that occurring was remote and would have required the conflux of several events. The absence of supervision and inspection by the Ministry prevented even the possibility of the necessary confluence.

In addition to the establishment and maintenance of the Registry the Ministry had demonstrated in other ways its awareness of the problem of child abuse prior to 1975. It would seem however that such awareness of the problem was not accompanied by significant interest and activity by the Ministry.

Dr. Sohn was appointed Co-ordinator of the Ministry's Child Abuse Programme. His appointment



was effective on June 1, 1976. He was the first person to occupy that position.

Dr. Sohn testified that until his appointment to that position the Ministry's statutory duties in respect of the protection of children had been performed through the children's aid societies under The Child Welfare Act. He said that in 1976 the Ministry decided that it was necessary for it to establish a separate programme within the Ministry to provide stimulus, encouragement and consultation to the societies. The programme was also expected to produce recommendations as to the development of legislation and of policies and procedures within the Ministry as to material to be used in the training of workers and the education of the public.

Dr. Sohn testified that in performance of his new duties he reviewed the function of the Registry. He said that the Registry had been intended to serve two main purposes.

The first purpose was to be a source of information to assist in "tracking" any person involved or suspected to be involved in any incident of abuse who may have moved from the area in which the incident of abuse allegedly occurred or who may have dealt with more than one doctor or hospital or social worker.

The second purpose was founded on the principle that in most cases an incident of serious abuse is preceded by at least one incident of less serious abuse. I presume the theory was that if the Ministry and the local society were aware of an incident of abuse one or both of them could act to prevent the more serious abuse that was most likely going to be caused in the future.

A third and subsidiary purpose was to provide information to enable the Ministry and the societies to understand the nature and extent of abuse in various parts of Ontario.

Dr. Sohn's testimony was similar to that of others who expressed dissatisfaction with the function of the Registry. He said the Registry was used in different ways and to various degrees by the societies. Some societies sought information from

the Registry at the first suspicion that there might have been an instance of abuse. In some instances the Ministry's staff would request additional information from a society if a supplementary report were not received within a reasonable time after the initial report on the matter was filed. The Ministry did compile and distribute an annual report upon the function of the Registry.

Dr. Sohn said that the information obtained from the Registry was useful. He did not say to whom it was useful or to what extent or purpose it was used.

He did say that the review which he began in 1976 did lead to a greater use of the Registry. He and others participating in the review had seen information which he felt compelled to bring to the attention of the Director appointed under The Child Welfare Act because he, a qualified social worker, had recognized from the relevant reports to the Registry that dangerous situations existed in the instances described in those reports. The Director had used Dr. Sohn and his staff in assisting the local societies and other personnel of the Ministry in working with cases reported to the Registry.

I infer from the latter portion of Dr. Sohn's testimony that Kim's was not the only case of some significant concern for or danger to a child reported to the Registry, but unknown to properly qualified personnel of the Ministry. I infer that those other cases, like Kim's, lay unattended by the Ministry even after they were noted by the clerical persons who had been left with responsibility for the function of the Registry.

Dr. Sohn frankly stated that in 1976 the Ministry did not assign to any of its trained social workers responsibility for the review of reports sent to the Registry. He did not seek to becloud or conceal that fact by using the rather grandiose title of "Review Unit" given by the Ministry to the clerical person who received and filed the reports to the Registry. There was no testimony that the situation was otherwise in 1975 or earlier years. I am satisfied it was not.

In my view that is a clear indication that, until Dr. Sohn began that review of the Registry, the Ministry's policies and procedures regulating the operation of the Registry did not provide an adequate mechanism to inform the Director and the qualified staff of the Ministry of the cases reported to the Registry. It confirms my stated belief that the Director and qualified personnel of the Ministry were not aware of the particulars of cases reported to the Register and, *a fortiori*, made no use of that information in dealing with such cases, by assisting the local societies or otherwise.

I note, as did Dr. Sohn in his testimony, that his appointment occurred about three years after the Ministry had received, published and distributed a document entitled "Child Abuse in Ontario--Research Report 3, Ontario Ministry of Community and Social Services - Research and Planning Branch, November 1973." I have mentioned that report earlier and there and now I call it the "Greenland Report" because of the participation of Dr. Cyril Greenland in its preparation.

The Greenland Report had expressed concern about the usefulness of the Registry, the manner and extent of reporting to it and the co-ordination and co-operation between and among children's aid societies and other agencies. Even three years after the Greenland Report the Ministry merely appointed Dr. Sohn to be Co-ordinator of its Child Abuse Programme and one of his tasks was to review again the Registry which the authors of the Greenland Report had examined and reported upon in 1972 and 1973.

I am reminded of the phenomenom described by Petronius.

I infer from Dr. Sohn's testimony that, notwithstanding the contents of the Greenland Report, the Ministry had not, in the intervening period of about three years, done anything to improve or strengthen the Registry, its function or its usefulness to the Ministry, the societies or the persons, whether abused children or abusing adults, named in reports to the Registry. An additional two year elapsed before any change occurred.



It was not until May, 1978, months after Kim's had become one of the highly publicized cases of death resulting from child abuse and after this Inquiry had been instituted, that the Ministry revised its procedure in relation to reports filed with the Registry. Only then did the Ministry begin to forward a copy of each such report to the Child Welfare Consultant in the Ministry with responsibility for supervising, inspecting and advising the children's aid society which had filed the report. That Child Welfare Consultant, presumably adequately qualified and experienced to analyze and assess such reports, would then be responsible for the future action, if any, to be taken by the Ministry in relation to the matter.

Upon the evidence I am satisfied that if that procedure had been followed in September, 1975, when the first report about Kim was filed with the Ministry, Mr. Charko or Mr. Mainville, like Dr. Sohn, would have recognized that the matter required some inquiry and attention by the Ministry. I am satisfied that, if nothing else, any of those gentlemen would have been in prompt communication with the Society.

That communication would certainly have been directed towards obtaining information from the Society about the case and particularly the concerns that qualified social workers should and would have had even on the basis of the first report to the Registry. I am confident that workers such as Mr. Charko, Mr. Mainville and Dr. Sohn would not have contented themselves with one telephone call or letter to the Society, but, subject of course to their own limitations because of the lack of qualified personnel in the Ministry, would have maintained an ongoing interest in the case, asking questions, making suggestions and giving advice. All of that would have been intended to ensure that the case was properly managed in every particular. I am satisfied, that with such supervision and assistance by the Ministry the handling of Kim's case by the Society would have been very different.

I appreciate that whatever might have followed from that original communication from the Ministry to the Society would have depended upon the response from the Society. In light of the reports



to the Ministry and to the Board of Directors of the Society by Mr. Lovatt and Mrs. Harvey, even as late as December, 1977 and February, 1978, I am not confident that any such response would have been reliable, complete or accurate. However if the Ministry had, by such a communication from Mr. Charko or Mr. Mainville, in September, 1975, demonstrated its interest in and concern about Kim's case the whole history of the case from then on might have been different. However it is idle to speculate.

Dr. Sohn testified that his responsibilities included the provision of education about abuse of children as a component of the training of social workers. He also had some responsibility to acquaint the public generally with the problem and thus, hopefully, to ensure a co-ordination of efforts by various agencies and disciplines in each area of the province to deal with the problem.

He said that in February, 1976 the Ministry convened a two-day seminar attended by about eighty persons. He said those persons included lay persons and representatives of all of the disciplines concerned with abuse. Those disciplines included law, medicine, nursing, social work, education and law enforcement.

The report of that seminar, entitled "A Fifth Step" was printed. Dr. Sohn said that report was widely distributed by the Ministry in March or April, 1976. He said that report set forth recommendations which formed much of the base for the Ministry's Child Abuse Programme.

That testimony by Dr. Sohn is interesting when considered in conjunction with that of Dr. Bates. Dr. Bates was one of several highly qualified experts named by Dr. Sohn as having been engaged by the Ministry in developing materials to be employed in the training of personnel in relation to the problem of child abuse.

Upon this Inquiry Dr. Bates was asked to comment upon the role of the Ministry in any such programme of education and training of personnel. His response was based on his own experience with the Ministry. He said that in 1973 and 1974 the Ministry furnished very little drive towards recognizing child

abuse as a problem. He had sought the Ministry's financial assistance to distribute a brochure dealing with child abuse. He had proposed that the brochure be distributed to children's aid societies, health professionals, social workers and others in the field. He had recognized the need for such a document as a beginning of a programme to educate the recipients of the brochure generally as to the problem. The Ministry's response had been that funds were not available.

Dr. Bates testified that his recognition of the need for such a brochure came, in part, from his reading the Greenland Report. His recognition of the need came also from his contact with children's aid societies, particularly those in Toronto. He testified that the personnel of those societies knew that they needed more education about child abuse. He said they wanted something such as the brochure he proposed. He said efforts were made to set up joint programmes with the societies. It was not clearly stated, but I infer that the efforts were made by personnel of the societies and Dr. Bates and other like minded professionals.

From the tone of his testimony I gather that all of those efforts came really to naught. He said that so far as he was aware the Ministry was then doing very little in the field of child abuse. He said that it was not until 1976 and 1977 that the Ministry began to have some visibility in the area of educational programmes directed toward the problem of child abuse.

That testimony by Dr. Bates is, in my view, a strong and valid criticism of the Ministry's role in this area during Kim's lifetime. Dr. Sohn's testimony does not reduce the strength or validity of the criticism. It does not lead me to believe that the Ministry knew or recognized that at least some children's aid societies, even prior to 1976, felt a need for educational materials in relation to abuse and that such need was real.

I am satisfied that, at least until 1976, the Ministry did not provide effective initiative in relation to abuse and it did not support a qualified and interested person, Dr. Bates, who sought to do something about the need for a programme of education

and the provision of some training or educational materials.

Mr. Lovatt's testimony as to the number and nature of memoranda or communications from the Ministry to the societies over the years was confirmatory of that view.

Dr. Bates' disappointment with the Ministry's activities in this area did not end in 1976. He was one of a number of professional persons across Ontario who had been seeking the organization of a seminar to bring together persons willing and able to share ideas about the problem and how it might be faced. He said that the Ministry sought assistance from him and six or seven others of various levels of expertise in different professions. That group assisted the Ministry in organizing a seminar in February, 1976. I presume it to be the one mentioned by Dr. Sohn.

While Dr. Bates did not expressly state such an opinion, I inferred he shared Dr. Sohn's view that the seminar was a successful and helpful undertaking.

But Dr. Bates' testimony as to what followed or flowed from the seminar contained one element not mentioned by Dr. Sohn in his testimony. That element was Dr. Bates' expression of disappointment as to the attitude of the Ministry towards the group of seven or eight professional persons, including Dr. Bates, who had assisted in the organization of the seminar.

In my view Dr. Bates' disappointment was well-founded. There was no testimony to explain why the Ministry acted as it did towards that group after the seminar. Like those who read this Report I am left to wonder what lay behind the Ministry's response to a generous suggestion by that group of highly qualified persons, whose assistance had been sought by the Ministry and who had helped bring about a document which formed the base of the Ministry's programme with reference to abuse.

As Dr. Bates put it in his testimony, the distressing thing following that seminar in February, 1976, was that the Ministry declined the suggestion



that that group of professionals, assembled at the request of the Ministry, continue as a body to provide consultative services to the Ministry about an educational programme in relation to abuse. Dr. Bates said the group represented a considerable body of varied professional knowledge and experience across Ontario. He said the group recognized the importance that the Ministry could assume in a programme of education in relation to abuse. Dr. Bates inquired as to the reason for the Ministry's rejection of the proposal. In his view he received no reasonable answer to that inquiry. He felt, simply put, that an educational programme was not assigned any priority in the Ministry's plans.

In isolation Dr. Sohn's testimony would have led me to believe that the impetus for the seminar in February, 1976 had come from within the Ministry. It would have been an error for me to believe that. On Dr. Bates' direct testimony, which I accept, the real impetus came from professional persons in the health professions and children's aid societies across Ontario who were concerned about the Ministry's inaction and lack of direction. The Ministry simply acceded to such urgings and asked Dr. Bates and others to organize the seminar.

It would almost seem that, in one sense, the convening of the seminar was a sop given to Dr. Bates and others like him who were so concerned about the Ministry's failure to assume its proper importance in this area. By their own efforts Dr. Bates and others like him had the seminar they wanted and a report of it was prepared and distributed. That was the end of that.

I should emphasize that Dr. Bates and the others with him were not seeking payment of fees for their services in any such continuing consultative process. They would have expected only reimbursement for reasonable actual expenses incurred by them. That was the basis on which they had assisted the Ministry in organizing the seminar.

I accept Dr. Bates' testimony that he was not alone in feeling a sense of disappointment or even distress when the Ministry acted as it did towards him and the others after the seminar in February, 1976.



I accept Dr. Bates' testimony that the distribution of information, including educational materials, among and to children's aid societies and other having responsibilities in child welfare is a massive problem. I share his view that it requires co-ordination. This does not in any way detract from my acceptance of Dr. Turner's opinion as to the obligations of each social worker to keep himself or herself current with reference to practices of social work.

I share Dr. Bates' opinion that the unique relationship between the Ministry and the children's aid societies created by The Child Welfare Act would, logically, have imposed on the Ministry the duty of co-ordinating the distribution of such materials to the children's aid societies who are responsible for the protection of children. In my view the local children's aid societies, including the Society, are in many ways merely extensions or projections of the Ministry into the local communities they serve. They do appear to have some degree of local autonomy, but that seems to be largely limited to the duty and responsibility to administer and enforce The Child Welfare Act. Financially they are almost totally dependent upon the Ministry. About eighty per cent. of their operating funds are provided through the Ministry and, for all practical purposes, the provision of the balance of their funds from the municipalities is dependent upon the approval of the Ministry.

Dr. Sohn continued his testimony to summarize some of the recommendations that were contained in the report upon the seminar, "A Fifth Step." One of those recommendations was that the Ministry appoint a professional person to co-ordinate a programme to deal with child abuse. It would seem that Dr. Sohn's appointment, as of June 1, 1976, was in response to that recommendation.

Some of the other recommendations were not unlike those made in other earlier reports commissioned by the Ministry and in testimony upon this Inquiry. One recommendation mentioned by Dr. Sohn was that success in the identification, treatment, management or prevention of abuse or neglect of children would require effort within the local communities. A second recommendation was that such

local effort would require inter-agency and inter-professional co-ordination. Dr. Sohn said another recommendation was that the Ministry assume responsibility to promote the assumption of full responsibility by the local communities and the integration of the efforts by the agencies and persons within the local communities.

The thrust of all of those recommendations was to place the real responsibility upon those who served at the local level. The Ministry's only responsibility was to be the promotion of the assumption of full responsibility by the local bodies and then the integration of their efforts.

Dr. Sohn mentioned two other recommendations set forth in that report. The first such had several components. It was that the Ministry undertake to provide funds for a variety of purposes including a review of how efforts could best be co-ordinated, establishment of local inter-disciplinary groups, testing of methods, research, development of professional training programmes, stimulation of the use of such programmes and promotion of public education. The second was that the Ministry seek to involve other ministries of government whose functions touch upon abuse, so that the efforts of all of the ministries might be co-ordinated. Some of the ministries he mentioned were those of the Attorney-General, the Solicitor-General, Education, Colleges and Universities and Correctional Services.

Even in those recommendations one finds the ubiquitous word "review."

Dr. Sohn then spoke of the Ministry having tried to accomplish those recommendations. His testimony was reminiscent of Mr. Macdonald's testimony. The effect was similar. He gave a description of "effort" by the Ministry and a statement of groups "devised" to serve specific functions, such as "development of co-ordinated efforts locally, the identification of needs and the development of programmes to meet those needs," which "might" include the "development of training programmes."

Dr. Sohn then followed with a list of treatment groups "either established or in the process of being established," or existing informally

because of the efforts or attempts of the Ministry. He spoke of "[moving] into communities to identify allies and...to stimulate...relevant agencies to come together." He spoke of the provision of funds to local communities and the convening of seminars.

All in all it would seem that since mid-1976, about the time of Kim's death then unnoticed by the Ministry, a great deal of activity was undertaken by the Ministry. It was not for me to explore whether Dr. Sohn was describing concrete advances or a new demonstration of the statement of Petronius.

In any event, it was all too late to help Kim.

Dr. Sohn's testimony corroborates that of Dr. Bates as to the need or desire of children's aid societies to obtain information about and training in relation to child abuse.

It was that need or desire which led Dr. Bates in 1973 or 1974 to seek the Ministry's support in publishing and distributing a brochure. He was denied support.

It was that need or desire which led Dr. Bates and others to urge the Ministry to convene the seminar which the Ministry did ask them to organize in February, 1976.

It was that need or desire which led Dr. Bates and others to offer to continue to assist the Ministry. The offer was denied.

The portion of Dr. Sohn's testimony to which I refer was as follows:

"The third area that we are involved with has to do with professional training. One of the messages that came to us loud and clear from children's aid societies and other agencies across the province when we met with people was "can you recommend a course, can you recommend a text, do you have a training package, and with that kind of information. We had bits and pieces of things we could pull together and help communities try to assemble for themselves,



but we went to the Ministry and asked in the second year of our operation for funds to enable us to develop a training package and to test it out, and we received approval for that and we proceeded to develop a training package. We were fortunate, we thought that we had a three year job ahead of us. Let me note that we insisted taking our cue from the inter-professional seminar that met in February, 1976, we insisted on inter-professional training,.."

I am satisfied that Dr. Bates had made a correct assessment of the desire and the need for information about child abuse as early as 1973 and 1974 when he was rebuffed by the Ministry.

I am satisfied that those professional persons whose urgings of the Ministry led to the seminar in February, 1976 had been similarly correct.

I am satisfied that those who organized that seminar for the Ministry and sought to continue to provide assistance to the Ministry were correct in believing they could be of assistance. They were rebuffed.

But as late as the second year of Dr. Sohn's service as Co-ordinator of the Child Abuse Programme, 1978, the Ministry was still receiving from the children's aid societies and others the same sort of expression of a need for training and information.

In the portion of his testimony immediately following that quoted above, Dr. Sohn went on to describe how the Ministry did develop a training "package" based on one obtained "free of charge" from the United States government. That did involve variation of the American "package" to suit the situation as it existed in Ontario. That involved the retainer of several experts in Ontario.

Dr. Sohn seemed to be proud that the American package was obtained "free of charge." He made no mention of the charges of the experts retained in Ontario to adapt it for use here. Interestingly enough, one of those experts was Dr. Bates who, with others, had been rejected in 1976



when they offered their services "free of charge" if I might borrow Dr. Sohn's words.

I recognize that the specific services provided by Dr. Bates and others to adapt the American material for use in Ontario may have been beyond the scope of what Dr. Bates and those who had served with him in 1976 had offered.

Dr. Sohn's accomplishment of getting something "free of charge" in 1978 may be commendable. The Ministry's rejection of the offer by Dr. Bates and others in 1976 is not.

In 1978 Dr. Sohn was optimistic as to the development of a total training package, apparently to be based on the American model adapted for use in Ontario. The Ministry had asked a private firm to furnish a proposal for such a development, including a statement as to the cost thereof.

With all due respect to Dr. Sohn and his "free of charge" acquisition, I am left to wonder as to its actual cost. He spoke of its adaptation, its subsequent testing in Ontario, its short-range evaluation, its long-range evaluation and its possible revision thereafter.

Apart from monetary costs there was the delay from February, 1976 until sometime in 1978.

Apart from any possibility that the continuation of the organizing group of the February 1976 seminar might have brought Kim's case to the attention of someone who would recognize its true potential danger, none of this would seem to fall within the terms of reference of this Inquiry. So I limit my remarks upon it to the foregoing.

What did impress me is that in 1978 Dr. Sohn was speaking enthusiastically of the then current activities and hopes of the Ministry in the development and testing of training materials. So much of it was still in the future. It represented essentially the Ministry's response to expressions of concern voiced by children's aid societies and others in 1978. But those concerns or some very similar thereto had been voiced years earlier, and they had gone unheeded or denied by the Ministry. Was the

Ministry's response in 1978 to those concerns merely a reaction to the publicity attendant upon the disclosures of Kim's case earlier in 1978? I am cynical enough to believe it may very well have been.

Dr. Sohn was talking of the need for training of members of the professions to report cases of child abuse. That too had been drawn to the Ministry's attention long before Dr. Sohn's appointment. But there had been no effective response by the Ministry.

Dr. Sohn described such training of professional persons as being of greater priority than public education. He spoke of the direction in which the Ministry intended to proceed.

I was surprised to hear Dr. Sohn, in 1978, speak of the Ministry's "[then] taking a close look at basic research." He said the Ministry did not know enough about what was happening in Ontario. He said the same situation prevailed in other jurisdictions. He spoke of meetings between representatives of the Ministry and of the corresponding ministries or departments of other provincial governments and of the Government of Canada.

My surprise was not so much that the Ministry was "taking a close look at basic research," but rather it arose from the impression I formed from Dr. Sohn's testimony that this was a recent development. When speaking of the meeting of the representatives of the various governments he said:

"...and we jointly discussed how we can assist each other in development of public education materials and development of research materials and that is an area that we are into now that we are beginning to take a good look at. We are preparing a proposal for the government with regard to basic research needs and that, I hope, will be prepared shortly."

That indicated to me more of what Petronius mentioned. It was another beginning and another proposal to be prepared.

Again I note that this emphasis upon research in this area does not conform to the opinion expressed by Dr. Bates. In Dr. Bates' view in 1978 there had already been sufficient research in a number of jurisdictions to enable useful and well directed programmes to deal with abuse. He stressed that in his opinion the main objective of any programme should be prevention of abuse. Management and treatment of abuse that did occur would be necessary, but prevention was the real hope.

I did not sense that Dr. Bates was suggesting that there be no further research. I understood him to be suggesting that with the results of prior research the Ministry and children's aid societies could proceed with programmes that would be helpful and the introduction of those programmes or the revision of others to correspond with the results of prior research should not be delayed to enable further research. It seemed to me that Dr. Bates was saying that application of prior information to enable actions to be taken to prevent abuse was a need greater than further research. He wanted action in the field rather than more study, planning, proposing and researching while all the time children were being abused.

I recall that Dr. Sohn had testified that abuse of children had occurred and had been recognized as early as pre-biblical times and was not a new phenomenon.

One segment of Dr. Sohn's testimony indicated to me that some of his personal opinions as a well qualified professional person were not greatly different from those of Dr. Bates at least in the area I have been discussing in the preceding paragraphs.

The segment to which I refer was not related specifically to the priority to be assigned to research in relationship to the priority to be assigned to immediate action in the field. Dr. Sohn was describing what the Ministry was doing in 1978 to encourage or assist the formation of inter-agency or inter-professional teams of people in local communities to work together in relation to abuse.

The following questions were put to Dr. Sohn and he responded as follows:

"Q. And as I take it not that what the ministry is doing is trying to encourage the development of these teams within a local community?

A. Encourage, provide resources to help them to find ways to develop it and to explore ways of developing it and to bring it to fruition.

Q. And I gather from what you're telling me Dr. that you want to have one of these teams in every 47 jurisdictions?

A. I would like to have more like about 20 teams in every one of the jurisdictions.

Q. We can agree...

A. But you realize that every jurisdiction usually has more than one small...more than one small town, or village or city in it.

Q. If child abuse continues to happen, it doesn't stop while we wait for these teams to...

A. You're absolutely right."

I believe that, if the last question set forth were paraphrased to indicate that abuse does not stop while the Ministry and children's aid societies continue to research and study, Dr. Sohn's response would have been equally emphatic and to the same effect as "You're absolutely right."

From what Dr. Sohn said it would seem that, at least by 1978, the Ministry was beginning to expend relatively substantial sums of money and to provide some leadership to the children's aid societies and to local communities in relation to child abuse. The Society was a major beneficiary of that beginning.

Dr. Sohn had been a member of The Task Force on Child Abuse whose report, which I have



chosen to call the Garber Report, was published in June, 1978. He was asked to comment briefly upon some aspects of the functions of that Task Force and its report.

His attention was directed to the first recommendation in the report. It was that the Ministry provide standards of procedures and practices for the children's aid societies and monitor the societies to ensure compliance.

His response was that a set of guidelines was developed by the Ontario Association of Children's Aid Societies with the help of the Ministry. He said that was so because it was felt that such development would be more appropriate than development by the Ministry.

At first blush I felt that response was itself inappropriate because, in isolation, it might be taken to indicate that that set of guidelines flowed from the Garber Report. In fact the guidelines had been published by the Association in 1976. Dr. Sohn's later response removed my concern in that area.

A second concern I had about the same response was the expression of the Ministry's opinion in 1976 that guidelines developed by the Ministry would be less appropriate than guidelines developed by the Association. That concern remains. I do not understand the basis for any such opinion held by the Ministry.

It may be that Dr. Sohn meant that the children's aid societies would more readily accept and comply with guidelines prepared by the Association. If so, it is another instance of the Ministry abdicating its responsibility to supervise, inspect and advise the societies. It would be akin to the situation into which Mr. Charko put himself and the Ministry when he testified that the Ministry limited its activities of supervision and inspection because they were regarded as an intrusion upon the autonomy of the societies. I would regard this apparent abdication of responsibility to prepare guidelines with the same scorn as I viewed that portion of Mr. Charko's testimony. It is not a

satisfactory fulfilment of the Ministry's statutory duties and obligations.

My criticism is even greater because the Association is a voluntary organization with no authority to require compliance with any guidelines it might have prepared. The Ministry had The Child Welfare Act as a base from which to impose its guidelines if need be upon any children's aid society that might arbitrarily choose to disregard them.

Dr. Sohn testified that the Garber Report does contain the recommendation that the Ministry develop and publish its own set of standards or guidelines to be met by the children's aid societies. He said that the Ministry was then in 1978 accepting that recommendation. The Ministry had commissioned the development of such a set of guidelines based on the experience of the societies with the guidelines published by the Association in 1976.

All of that would seem to have been envisioned in 1976 when the Association published its set of guidelines. The introduction to that document contains a paragraph stating that guidelines for practice and procedures in the handling of cases of child abuse were even then, in 1976, long overdue. The authors or compilers wrote of the difficulties encountered in establishing definitive guidelines because of lack of common understanding in definition and identification, disparities in case handling, fiscal problem with reference to preventive services and regional differences such as tolerance of abuse. They emphasized their wish that practitioners review, test, modify and comment upon the document and the guidelines with the hope that "in about a year's time" from July, 1976 it would be possible to produce guidelines which would be practical and would give some assurance of consistency across the province.

It should not have required the Garber Report to move the Ministry to follow up on the Association's publication of July, 1976. But apparently the Ministry did not pursue the matter except in response to the Garber Report published in June, 1978. In October, 1978, when Dr. Sohn testified, the Ministry had received a first draft of guidelines specifically directed towards the management of cases of abuse, but hopefully, he said,

useful in the management of protection cases generally.

Dr. Sohn was asked about the recommendation in the Garber Report that the Ministry prepare standards of service for the complete implementation of section 6 of The Child Welfare Act which defines the purposes of the children's aid societies.

His response was in the cant of officials of the Ministry who testified upon the Inquiry. He said the Ministry was "developing proposals for that." That type of response is open to many interpretations. It is meaningless for my purposes.

I was somewhat surprised by Dr. Sohn's comment upon the Task Force's recommendation that the staff associations of the children's aid societies be involved in planning and policy determination. He said the Director under The Child Welfare Act had communicated with the societies to enable preparation of a list

"so that we [the Ministry] knew which are the associations so that we can begin to deal with them."

I regard that answer as an acknowledgement of the absence or limitation of supervision and inspection of the societies by the Ministry. It seems to be in the same position as Mr. Charko's testimony that the Ministry confined its communication with the societies to communication with the local directors because, under The Child Welfare Act, the local directors are required to co-operate with the Director appointed under that statute. It seems to me that, by failing to have established communication with staff associations, the Ministry limited its own abilities to perform its statutory duties. The Ministry deprived itself of access to a fund of experience and knowledge which would not necessarily be expressed in responses from local directors as individuals or as the corporate officers expressing the corporate opinions of the societies.

It is to me a sad commentary upon the Ministry that until its response to the Garber Report the Ministry had not begun to deal with the staff



associations. That response by the Ministry dated September 8, 1978 contained the statement:

"We [the Ministry] will, in future, be sure that Staff Associations receive their own copies [of consultation papers set out by the Ministry]."

That assurance was long overdue.

Dr. Sohn commented upon the fourth recommendation in the Garber Report. It was, in essence, a recommendation that guidelines for inclusion of data and diagnosis emphasize uniformity of reporting and that guidelines for record keeping by children's aid societies be standardized. Dr. Sohn testified that this recommendation related to the child abuse registry. He said that the guidelines he had mentioned earlier were directed toward establishment of standards of terminology and reporting. He felt that that recommendation in the Garber Report would be implemented.

The fifth recommendation in the Garber Report was that the Ministry initiate an accreditation process for children's aid societies with appropriate regulations made under The Child Welfare Act. Dr. Sohn was not aware of any action having been taken to meet that recommendation. He was aware that it had been the subject of "quite intensive discussion." Again I find no help in that response.

Dr. Sohn's comment upon the next recommendation was similar to that which I have just mentioned. He said the recommendation that the guidelines provide for rotation of staff was "being reviewed." But he went on to say that the Ministry, the Ontario Association of Children's Aid Societies and individual societies were looking at it and particularly the problems that, if it were implemented, might arise for far-flung smaller communities having only one multi-purpose worker.

Dr. Sohn testified that, even on the day he testified, he was working on a draft of guidelines for the participation of multi-disciplinary teams as recommended in the Garber Report. He expressed some concern that such guidelines might be open to too rigid interpretation whereas they should be flexible



enough to reflect or accommodate conditions in each local community. He seemed to suggest that really what might be done in implementation of that recommendation would be the preparation of a document explaining what arrangements had already been tried in some communities and the results thereof so that, with appropriate consultation, presumably with personnel from the Ministry, a procedure might be devised to suit the current situation in each community.

If I have correctly understood the meaning which Dr. Sohn intended to convey I regard it as an eminently sound and practical approach. Most, if not all, of the well-qualified persons whose testimony touched upon the formalization of practices and procedures testified to much the same effect when they said that practices and procedures developed in one community might be applied in another community, with or without revision depending upon local circumstances.

The next recommendation in the Garber Report was that the Ministry require children's aid societies to initiate the formation of local multi-disciplinary teams to perform stated functions. Dr. Sohn said that recommendation was being "seriously considered" by the Ministry which was "reviewing" it as part of the legislative process in relation to Bill 114 and regulations which might be made thereunder. That legislative process led to the enactment of The Child Welfare Act, 1978. I have examined that legislation and the regulations thereunder. There is no mention of multi-disciplinary teams or anything of that nature.

I understand the difficulties that might be encountered in any attempt to implement the recommendation in a literal sense. The children's aid societies would have only the power of persuasion to obtain the participation of others upon such teams. But the recommendation was merely that they be required to initiate the formation of the teams.

In my view the formation and maintenance of multi-disciplinary teams is important to the detection, investigation, management and treatment of abuse. Some one must take the lead in establishing those teams. The Ministry and the children's aid

societies are charged with the duty of protecting children. They should take that lead. From the testimony upon the Inquiry I am satisfied that other professions, organizations, institutions and agencies would be willing to co-operate in the operations of such teams.

Dr. Sohn's testimony as to the activities of the inter-ministerial committee on Children's Services was encouraging. That committee was reviewing with the Ministry ways in which professions, persons, agencies or organization subject to regulation by the various ministries of the provincial government might be encouraged to assist the children's aid societies.

Dr. Sohn was then asked to comment upon the fourteenth recommendation in the Garber Report. It was that the Ministry institute high standards for alternative care of abused children. Dr. Sohn testified that this too was being reviewed by the Ministry. He added that the Ministry was developing a training programme for foster parents and was negotiating with some communities as part of a project to demonstrate recruitment and training of foster parents. The Ministry was also testing means of providing a form of alternative care of children who had been abused. This would involve someone being in the home with the parents and the child who was abused.

Counsel then inquired of Dr. Sohn as to the implementation of the eighteenth recommendation in the Garber Report. It was that immediate protective service intervention be provided on a twenty-four hour basis. His response was simply that the Ministry had inquired of the children's aid societies as to their current practices and what would be required to enable the service to be always available. He did not indicate what the responses by the societies had been or what the intention of the Ministry might be.

He was then asked about the twentieth recommendation which was that the Ministry, through the inter-ministerial committee, request other ministries to include appropriate child abuse training content in the curricular for their respective professions. Dr. Sohn testified that the Ministry

had made the appropriate request of that committee which was seeking to identify what professions, persons, institutions and the like might be required to receive such training. The committee was also seeking to determine what the nature of programmes for such training might be and the guidelines and policy with reference thereto.

## Chapter XXX

### The Testimony of Expert Witnesses

#### —Dr. Robert Bates—Dr. Francis Joseph Turner

The qualifications of Dr. Bates, as a medical doctor and as an expert in the field of child abuse, and of Dr. Turner, as an expert in the field of social work, are set forth in Schedule 1-E to the Report.

Both gentlemen impressed me very favourably, not only with their knowledge and expertise in their respective fields, but also with their dedication to those fields.

Each in his turn demonstrated an interest in improving the contribution that he and his colleagues and others working in their respective fields can make to the welfare of children in Ontario and elsewhere. Each had a background of practical experience to complement his academic achievements and experience. Each had a sympathetic understanding of the position in which any person, lay or professional, may find himself or herself while working in the field of child welfare or merely, for any reason, becoming aware of situations involving the welfare of children.

Dr. Turner was asked during his testimony to express his opinion and to comment upon various incidents relative to Kim's case. In that regard he was asked to assess the actions or decisions of various persons. In making that assessment he was asked to compare or contrast, as the case may be, those actions or decisions to or with the actions or decisions which he would expect to have been taken or made by "an ordinary social worker reasonably educated, instructed, [and] diligent," in the circumstances of those incidents.

A basic concern was expressed by Dr. Turner. It was that the term "social worker" was used much more loosely than he felt it should be. He believed that some persons who were employed in



social work and who were called "social workers" should not be entrusted with responsibility for certain areas of child protection. That was because they lacked adequate qualifications. However there were some functions in a children's aid society which they could adequately perform with their lesser qualifications.

Leaving that difficulty aside Dr. Turner then proceeded to express opinion and comment upon various incidents. Before testifying he had read the transcripts of the earlier testimony of Mesdames Saul, Harvey and Lo and Mr. Carter. He had also read copies of the recordings in the files in respect of Kim in the Family Services and Children's Services Departments of the Society. Those files were produced as exhibits upon the Inquiry.

Dr. Turner was asked some questions about the events in March, 1975 when Kim was in hospital with the fracture of her left humerus.

He said Dr. Singh's referral of the matter to Mr. Khattab, the hospital's social worker, was "an understandable referral." When told of Mr. Khattab's academic attainment and his claim never to have heard of child abuse, Dr. Turner's comment was succinct. It was:

"It's a shock to me, sir."

I infer he meant that he found it difficult to believe that one could attain the academic qualifications claimed by Mr. Khattab without having heard of child abuse or some corresponding terminology, such as "battered baby syndrome."

If my inference is correct, I share Dr. Turner's "shock."

Dr. Turner was asked about the events of June 17, 1975. He was cautious in his remarks as to Mrs. Dick's actions on that day. He said that they could be judged fully and properly only by one familiar with the organization of the Society. He acknowledged he lacked that familiarity. However, in his opinion, Mrs. Dick, as intake worker, had fulfilled her duties by ensuring that Mrs. Saul and Mrs. Hoad had all the information Mrs. Dick had

received and that they did in fact complete the visit to see Kim. He viewed Mrs. Dick's recording for June 17, 1975 as being normal.

He was told that Mrs. Saul had been "a social worker for about five years" and had been granted the degree of Bachelor of Arts. He was asked to state "what a diligent, trained, qualified social worker should have picked up or should have done" when assigned a duty such as was assigned to Mrs. Saul on June 17, 1975.

The answer to that and supplementary questions put during Dr. Turner's response was expressive. It was:

"Well my first hope would be Your Honour that this worker would have been alarmed and seriously alarmed that this was a critical case. It appears...that there was sufficient information available to know that we have virtually all the indicators of high risk abuse situation.

...multiple bruises and the other point that concerns me that over the last six weeks, the infant has had a broken arm on occasion and another a black eye when admitted to hospital etc. I think presuming that the agency, if they weren't able to verify that immediately would have done that in a very short time had clear indication that this was a possibility of unexplained injuries and the other factor, the repetition of them. The fact that this was not a one occasion situation would give someone adequately functioning in this field cause for serious alarm.

...they should have done it [looked into the allegations of previous abuse] if not prior to that visit, but certainly immediately after. Whether the child should have or should not have been apprehended on the spot, I think it is a judgment call but one could argue leaving the child until further information was gathered."

Dr. Turner was advised that Dr. Singh, having seen Kim, had written in his report to Dr. Jumean dated March 27, 1975:

"I would strongly suspect that the battered child syndrome is present and if we do not protect this child at the present stage, she might end up with a fractured skull or some other fractures later on in her life."

Dr. Turner's response was that that was the sort of information that would have been learned if an investigation of Kim's earlier injuries had been undertaken on or immediately after June 17, 1975. I infer Dr. Turner meant that such an investigation should have been undertaken immediately.

Dr. Turner then mentioned another portion of Dr. Singh's report dated March 27, 1975 wherein Dr. Singh wrote:

"It is extremely unusual to break a solid, long bone such as the left humerus, on just by changing the child's hand." (sic)

Dr. Turner then continued to say:

"I just caught a glimpse of what he had said there is one of the real indicators are the type of injury that a child receives and here where Dr. Singh has indicated that it's extremely unusual as he said to have this type of injury and it's that pattern of injuries that do not happen in the ordinary course of the child's life that are increasingly the indicator for us and so the social worker's responsibility is to be aware of injury but certainly to look for the pattern then and the nature of such injuries and to enquire to ensure that there is at least a high degree of probability that these were accidental, or were not accidental."

Dr. Turner's opinion was that Mrs. Saul had properly recognized and reported "danger signals." Assuming Mrs. Saul to have been aware of the allegations that Kim had been injured on some earlier

occasion or occasions, Dr. Turner continued his assessment of Mrs. Saul's performance of her duties as follows:

"Well my expectation of a worker in this position would be certainly that they fulfill their responsibility of following up on the complaint and attempting to establish what was the nature of the situation. I was a bit surprised at the recording that there wasn't some more evaluative statements. I would think this is a key person in the whole process of assessing and dealing with an abused child situation - that person who makes the initial contact on the part of the protective agency or protecting agency that I would want that person to do more than report. I would want and I think it is very important that they assess...that they try and give us some indication of the gravity with which they view the situation, the...at least a preliminary estimate of probabilities here although it is very much in the realm of a judgement call....Now she does indicate that some further work - some ongoing work is required and that at least allows us to presume that she saw it as being serious."

A little later in his testimony Dr. Turner returned to his assessment of Mrs. Saul's report to Mrs. Harvey. He said that, while Mrs. Saul seemed to have indicated the need for "some on-going contact," she did not make any recommendation as to the nature or level of such contact. He said Mrs. Saul's report lacked "an evaluative component" and that "anyone who carries responsibility to report on a situation," should provide that component in the report so as to indicate how seriously she viewed the situation. In this instance Mrs. Saul had that responsibility to report upon the situation.

Dr. Turner did say that Mrs. Saul's statement in her report that:

"this defensive hostile young mother [Jennifer Popen] should be closely supervised considering the history of the



recent six week [incidents of earlier injuries to Kim]."

did provide a portion of the evaluation which he would have expected in the initial report from Mrs. Saul. He felt her report did not give a sufficient "indication as to how seriously she viewed the situation."

He said he would want to see in Mrs. Saul's recording her assessment of the abuse that had occurred and her assessment of what might be achieved as well as a statement as to what she felt the Society was to "supervise."

He concluded his initial response as follows:

"...in this kind of case, what is so important is to build up the whole picture so that we can see it and so that anyone dealing with the case can get a total view of what information is available...it's their responsibility to assess that information."

Dr. Turner was asked to express his view as to what Mrs. Saul might reasonably have been expected to do about the case after she made her report orally and in writing to Mrs. Harvey who advised her that the case would be assigned to Mr. Carter.

His response was guarded because he was not aware of the exact nature of the structure of the Society. He felt that Mrs. Saul's own assessment of or her degree of confidence in the manner in which the Society functioned would have influenced her conduct. He testified that he would not have expected her to do more than make an occasional inquiry as to how the case was progressing.

I formed the impression that Dr. Turner's position in that response assumed a reasonably well organized and functioning children's aid society. As a result the tone of his response was overly kind to Mrs. Saul. Others who had examined the organization and functioning of the Society were extremely critical in their comments. Mrs. Saul, with her education and experience, should have been aware of the

deficiencies or inadequacies of the Society mentioned by those witnesses. Accordingly, she should have followed the handling of Kim's case more aggressively than Dr. Turner suggested in his response.

In my view, in the light of the testimony of those other witnesses, Mrs. Saul should have inquired to ensure that indeed the case was in fact assigned to Mr. Carter or to some other long term worker and was receiving attention.

Such inquiry by Mrs. Saul, should have included discussion with the long term worker to whom the case was assigned. Such a discussion would be similar to the type of conference which witnesses recommended should accompany the transfer of a case from one worker to another. Responsibility for ensuring that such a conference is held rests on the two workers involved and their supervisor. Mrs. Harvey and Mrs. Saul were responsible in this instance. No other member of the staff of the Society, including Mr. Carter, bears any of that responsibility. No member of the staff was informed that the case would be assigned to him or to her.

Dr. Turner was invited to discuss whether or not the Society should have taken Kim into care on June 17, 1975. He said that in view of the reported earlier fracture of Kim's arm he would have "understood" if she had been apprehended on June 17, 1975. He felt that a children's aid society worker, very experienced in working with cases of child abuse, aware that fractures have been helpful in identifying abuse, might more probably have apprehended Kim that day.

Dr. Turner expressed the view that an experienced children's aid society worker, confronted with a situation such as Mrs. Saul encountered on June 17, 1975, should have insisted that Kim be examined and X-rayed to assist in the assessment of the bruises which had healed and the extent of the injury indicated thereby. He acknowledged that that might have involved apprehending Kim, but he felt the medical examination could have been achieved without having to apprehend her.

The structure of the particular children's aid society would determine what worker would be

responsible for arranging for such examination and X-rays. It might even have been the subject matter of a conference of all of the workers involved in the case and their supervisor.

Dr. Turner acknowledged that on June 17, 1975, believing the original complaint to have been anonymous, the Society would be aware of the risk of over-reacting to an anonymous complaint. He felt it would have been helpful to the Society if Police Constable Gander had told them that the telephone call to the Sarnia Police Force was made by Dr. Jumean.

Continuing his assessment of the handling of Kim's case by the Society on and immediately after June 17, 1975, Dr. Turner accepted counsel's statements that "someone should have opened this file" and "someone should have checked into the medical backgrounds." When asked if that was a "glaring omission" he replied:

"Yes. No doubt about that."

He said that the identity of that "someone" would depend upon the organization of the Society. He did not identify that "someone," but continued:

"...Once that home visit was known - once that first information was known in June, even the most basic of social work practice would ensure...would insist that a full assessment be begun of that situation and some clear decisions made and a) the gravity of the situation and b) the probabilities of various kinds of outcomes and c) what kinds of possible interventions should be instituted to get that done and what does concern here is that is the same theme that I'll probably mention a couple of times and not being aware of who saw the case as serious within the agency - obviously other people saw it as being serious outside the agency.

Q. Well.

A. So someone should have prepared what I would call a psycho-social history or a



social history depending on the abuse of ..."

In later testimony he made it clear that in any such assessment the children's aid society should avail itself of all resources reasonably available in or near its community. That would include obtaining psychological testing and assessment of the parents.

He said that the social worker in Kim's case would have

"to know what Mrs. Popen's early history [had] been socially in order to try and understand what the possible implications of that [were] for her psychological development and vice versa..."

He said persons can abuse children because of current stress in their own lives or because "they were damaged in their own past." He said the social worker faces the difficulties of combining the disciplines of psychiatry, psychology and sociology. The social worker must not only report upon the condition of the home and the mother and the occupation of the father, but must also assess the impact of all of that and the effect, if any, upon the function of the parents.

Dr. Turner expressed the opinion that the first contact of a children's aid society with an incident of child abuse is important. It is not necessarily critical because a bad beginning can be overcome.

Dr. Turner was asked to comment upon Mrs. Dick's performance of her duties at the hospital on August 31, 1975. He said that in his opinion Mrs. Dick, as a professional, was obliged

"to make sure she came home with [Kim]"

whether by apprehension or on consent

"...Her other task was to leave as many doors open as possible to work with this family."



He was not concerned about Mrs. Dick's decision to proceed as she did in the circumstances, that is by obtaining the parent's consent to Kim being in the care of the Society. He felt apprehension of Kim would have been acceptable in the circumstances. He would have preferred immediate apprehension. His opinion was that Mrs. Dick's decision was understandable and defensible in all of the circumstances.

Dr. Turner acknowledged that a non-ward agreement substantially such as Mrs. Dick used should, ideally, be an agreement entered upon entirely voluntarily and not as a result of any statement that if it were not signed the child would be removed. He fully understood Mrs. Dick's dilemma on that Sunday afternoon on a long holiday weekend.

He said:

"...Yes, I think technically that worker would have been and one would have expected a very skilled person to have moved and taken wardship. I can understand somebody hedging a bit as long as out of it, she had the child until Monday. Monday I would want the agency to move in with the full weight that it had and I'm not sure that it was going after wardship."

He went on to say that, ideally, Mrs. Dick might have sought information from the hospital files that day. He felt that she would not likely have been successful. However the ongoing worker would be required to pursue that search.

He criticized the Society for not moving promptly after August 31, 1975 to alter the nature of the basis upon which care of Kim was entrusted to the Society.

In his opinion the staff of the Society should have then, in September, 1975, made the assessment of the situation and the psycho-social history such as should have been done in June, 1975 and which are described in the portion of Dr. Turner's testimony reproduced above.

He said:

"What the agency's responsibility is through its staff then is to say: 'What is the nature of this case. What have we got here? What are the strengths of it? What are the limitations of it? What information do we have? What information might there be available? Who could know something about this.' Because once the red lights have gone on about potential child abuse, we know that one of the concerns is the gathering of information and we've seen in so many cases the post factum, there is information available and often I would think the agency should be aware that that is one of the problems in these cases of information that exists in several places and reaching out to see if it can be obtained. Now all that information isn't always available to the agency.

Q. But you mean there should have been diligent efforts taken to research the background.

A. Yes. Do the history as we say in the ...

Q. Is that routine?

A. Yes, yes, I think in any agency that's involved and especially in this other case where we've had more than enough evidence to indicate that here is a high likelihood of recurring abuse."

Dr. Turner acknowledged that the success of any such investigation, particularly in relation to medical records, would depend upon the agency's "network of working relationships" with its community and upon the skills of its professional staff and advisers. One element of such a network should be a community-based child abuse committee to enable removal of an many bureaucratic obstacles as possible.

Dr. Turner felt that Dr. Jumeau's telephone calls to the Sarnia Police Force and The Lambton Health Unit on June 16, 1976 indicated his concern

and his willingness to share information and to assume any risk to himself arising therefrom.

The Sarnia Police Force and the hospital staff were seen by Dr. Turner to be "very natural all[ies]" whom the Society might have involved in such an investigation.

He acknowledged that there might have been difficulties which would prevent medical persons, such as Dr. Singh, from making certain information available to the Society. That was because of concern for preservation of confidentiality of such records. Nonetheless efforts to that end should have been made and some useful information might have been obtained.

He described some further inquiries that should have been made. He said:

"...If we were talking about a qualified social worker, then he or she should have begun immediately to begin to try and put together an assessment of who these parents were - what were their psycho-social strengths as parents - what were some of the background information that....

Q. What do you mean by background information?

A. Something about their just working background. Their marital status, their educational status, their socio-cultural origins and the problems that may have existed in the past. Any strengths that we may find. We're always looking for strengths and areas of stress. That's the judgement you're trying to weigh. What have I got here that ...

Q. Right. So there should have been a workup on the parents ...

A. Yes, very much so.

Q. ...as well as the medical history of the child...

A. Yes, very much so.

Q. ...and would that be routine then?

A. Yes.

Q. Of a diligent social worker?

A. Very much so.

Q. And when you're talking about strengths and various weakness, we're talking about the interrelationship between the mother and the father?

A. Yes.

Q. And you're talking about their background as children themselves?

A. Yes.

Q. Is that routine to look into that sort of thing?

A. Yes.

Q. In a child abuse case?

HIS HONOUR: Excuse me, your response was affirmative was it?

MR. TURNER: Yes..."

and he continued:

"...Your Honour, one of the things that may have influenced well, let me just put it in a more abstract way...may influence such cases like this. There was a period in social work practice of a few years ago that was very much present-centered - the concept that we started always where the client was in the present and that earlier interest in earlier history was not seen as important and this really represented a disciplinary struggle within the profession. My hunch is it was not operating here but there were some practitioners who



said we take them where they are today and we're not worrying about the earlier historical matters. I would think most of us are not supportive of that because we have enough evidence that although you can't predict exactly who is going to abuse, there certainly are some paradigms beginning to emerge of higher risks than others and we do know people who have had highly rejecting origins of their own have a higher likelihood of abusing than others although it's not a cause and effect. A certain cause and effect situation. I think it would be another red light that you would want to go on very clearly but we had trouble here.

Now to what extent, and this again is a question of skill and competence as this mother has emerged to me...at least from paper...I'm not sure it would have been all that easy to have put together as rich a history as cooperative verbal outgoing kind of client but there is a report later from I believe a psychiatrist who did appear to have been able to elicit a fair...the high degree of detail about Mrs. Popen's origin and it seemed to me it would have been...

Q. That is the report after she was...

A. That's right.

Q. ...convicted for manslaughter.

A. And certainly he was, he or she was interviewing in a different kind of situation but dealing with what is called the unwilling client is not an unknown role for a trained social worker. That's not a ...

Q. Right.

A. That's not a big problem. It takes skill of course."

Counsel asked Dr. Turner's opinion as to what the staff of the Society might have done in the

face of the position taken by Mr. Higgins, as solicitor for Annals Popen and Jennifer Popen, that Mr. Carter was not to talk to or quiz Annals Popen or Jennifer Popen. Mr. Higgins had said such would occur only over his dead body.

Dr. Turner responded to say that his expectation was that a fully trained social worker with the degrees and status of membership in a profession would have challenged Mr. Higgins' position. He acknowledged it might have led to a "not too friendly discussion," but he felt that Mr. Higgins' statement could not be taken at face value. It might have required the Society to obtain the services of a solicitor to resolve the matter with Mr. Higgins or to ensure that the Society's personnel performed their duties properly and quickly.

In Dr. Turner's opinion, even though Annals Popen and Jennifer Popen might choose to remain silent because of the charge against them under section 40 of The Child Welfare Act, it was incumbent upon the Society to pursue this investigation and search for information as a part of its preparation of its own application for wardship of Kim.

Dr. Turner's opinion was that the Society should have been consulted by the Crown Attorney or the Sarnia Police Force before Mr. Higgins' proposal for the disposition of the charge against Annals Popen and Jennifer Popen under section 40 of The Child Welfare Act was accepted and acted upon in February, 1976. He felt that was important even if only to assist the Society in the development of plans for Kim's future.

Dr. Turner testified that he was unable to determine that the Society had any stated goal in the management of Kim's case other than the intention that Kim be returned to her home. He described all of the recording of Kim's case in the files of the two departments of the Society as being simply reporting and recording administratively what was seen or done. In a sense it recorded implementation of the plan to return Kim. He said it was not what he would expect from a professional in that it essentially lacked the component of diagnostic evaluation and summary.

He acknowledged that Mrs. Saul's recording of a need for ongoing supervision of the family might be a "rudimentary plan," but that did not disclose if the plan was to strengthen the family or to protect Kim. It was a "very low level plan." It lacked assessment of what had happened to Kim and what might be accomplished and what was to be supervised.

Mr. Turner said Mr. Carter too had risked an opinion when, in his recording under date September 1, 1975 to February 29, 1976 prepared after Kim's case was assigned to Mrs. Lo, he wrote that Jennifer Popen was a proverbial liar. Dr. Turner felt the paragraph of the recording, marginally described as "Further Points of Clarification," did go part way to what he felt was required. It did raise some questions, but it lacked specificity and was not a plan such as should have been prepared in a case such as Kim's.

He said the absence of stated goals made it difficult for anyone to assess the performance of the Society's personnel, both in relation to the adequacy of the goals selected and to the adequacy of the actions taken to achieve them.

Counsel asked Dr. Turner about the procedure which is normally followed to remove a case from one worker and to assign it to another. Dr. Turner's response assumed an agency of reasonable size wherein everyone would not know something about every case in the agency. That assumption would embrace the Society.

Dr. Turner said that such a transfer of responsibility required "some very clear transfer type of process," including a conference variously called a "case conference" or a "transfer conference." He said such procedure must have a formal structure. It serves several purposes. It enables the present worker to complete various items of assessment, recommendation and recording which may be outstanding. It enables the briefing of the succeeding worker. Dr. Turner felt that was an essential function of the procedure. It enables the agency to review its plan for the case to identify areas of uncertainty or absence of information.



The procedure facilitates a prompt and effective transfer, planned and executed and recorded in an organized fashion. That is beneficial to the agency and to the client or clients being served. It removes the need for the new worker to begin again from "day one." That is beneficial to everyone "administratively and professionally and therapeutically." In some cases, "especially if there are some difficulties around relationships," it might be desirable for the present worker and the incoming worker to carry the case together for a short time.

Dr. Turner was asked to comment upon Mr. Carter's testimony to the effect that Kim's case was transferred from him for "ethnic" reasons. Dr. Turner said that in some instances a worker might be chosen for a particular case because of his or her sex, colour, religion or ethnic group. His reading of the Society files gave no basis for any such consideration in Kim's case.

He said that if there was some particular reason why there would be greater affinity between Jennifer Popen and Mrs. Lo than between Jennifer Popen and Mr. Carter, Mrs. Lo might have worked with Mr. Carter or the transition might have been gradual so as to enable an informal sharing of information by Mr. Carter to Mrs. Lo.

In Kim's case there was no sharing of information. Dr. Turner felt there should have been. He could not understand why there was not.

He concluded by saying:

"As a very general observation, unless there are very clear lines of responsibility in the family, I think we always have some question about unnecessary transfer of cases.

Q. Yes.

A. I think that as a practice, I would like to see the case stay with the same group of people.



Q. Would that be more particularly applicable when we're dealing with child abuse cases?

A. Yes..."

Dr. Turner was asked to comment upon the assignment of Kim's case to Mrs. Lo. He said that he had "very grave concerns" if the word "assignment" in the question meant the giving of considerable responsibility for the case.

He went on to say that someone such as Mrs. Lo might very properly be part of a team of workers assigned to a case such as Kim's. Such a person would be an added resource. He continued that comment as follows:

"...but I am increasingly convinced and the evidence is overwhelming that we need our ...absolutely most qualified people on these cases and that in no way is going to ensure that we won't make mistakes, but it certainly is going to result in cutting down on mistakes being made.

I would want to know and hope that Mrs. Lo received at least some basic orientation to the nature of child abuse cases and one thing that is very much on our side in these days is that because of the very high interest in this type of case, there is just an abundance of excellent literature around that would be useful for someone - even if they did no more than two or three weekends of reading on it would be at least a minimum orientation to it.....And I'm not saying that the Mrs. Los of this world cannot be helpful in this type of case but it's even more serious if we have assigned them to take on these responsibilities without preparing them for them.

What I wished this agency had or would have had would have been something like a child abuse team. The literature is very much supporting that this is an important thing - a team that can be called together when we have a case with all the indications

that this one appears to have had to ensure that the thing is monitored all through it and that even if, from time to time, someone like Mrs. Lo has to take some responsibility in it, that we have the back-up for her of all the competence and skill and knowledge that is available. If we can't always afford to put fully trained people as the first-line workers here, that at least we have provided them with a back-up that will permit us to monitor and I'm very, because of the interdisciplinary nature of these cases that is so clearly evident here, I'm of the very firm opinion that agencies should move to these type of teams.

The advantage of them is that they don't have to work at...I don't know the in-take of that agency but this is not something that happens everyday of the week and because of that, you have a group who can come together because of the extraordinary components of the case to ensure that everything is being done."

In cross-examination Dr. Turner was told that Mrs. Lo was classified and employed as a social worker I within the meaning of the Regulations made under The Child Welfare Act. He was asked how he would see her being used in a children's aid society.

His reply was phrased to express his belief that, before he could adequately decide upon the nature of tasks which could normally be entrusted to Mrs. Lo, he would require more information as to her knowledge and qualifications and particularly her educational qualification and experience. He would want to know her strengths and "deficits" or limitations and whether provision could be made to compensate for any limitation as by arranging for her to be closely supervised. He would want to know that some assessment had been made to gauge the nature of any case which might be given to her.

He was given some information as to Mrs. Lo's educational qualifications. He was told simply that she held the degree of Master of Arts in

Education and while with the Society she took an "upgrading course."

He was told that, having joined the staff of the Society on December 5, 1975, she was given responsibility for Kim's case about February 22, 1976. It was her first case.

Mrs. Lo's evidence was that she held a Master's degree in Elementary Education granted by the University of Connecticut in 1972 following a Bachelor's degree granted by Taiwan University in 1970. She had no training in social work, but her course in Elementary Education contained sections on child development, social psychology, sociology and psychology and characteristics of emotionally disturbed children. She had worked as an office clerk following her graduation. She did not mention any "upgrading course," but did say that she understood from Mrs. Harvey that she would require a year's training before she could be regarded as an experienced social worker.

Dr. Turner was not made aware of all of that detail. What effect it might have had upon his reply is unknown.

His response was direct and critical. It was transcribed as follows:

"That's frightening to me. That's the only term I could perhaps. It seems to me that without a lot of knowledge of who she was and her knowledge and the training and prior experience that if it was as simple as that, then I would find it most difficult that an agency would use someone in that capacity unless they were desperate and it was an emergency and there was no other person available. I mean there would be some extenuating reasons why you might have to say - get out there and do something. It seem very premature to me."

He was then told that Mrs. Lo visited the Popen home regularly and discussed the situation with Mrs. Harvey her supervisor, who did not visit the home. He was asked to comment and did so as follows:



"Yes it is again suprising. What I would hope especially in this type of case as we have to develop, I would think that even if this was a fully qualified person, a case that apparently had this risk or a case with these kinds of risks that they would ...that probably she would work with a more experienced person at least through a couple of cases like this and I'm surprised that she would visit the home alone without anyone working with her closely on it. I could see her visiting the home alone if someone else was also visiting in another capacity or something like that but it is surprising."

Dr. Turner was asked to comment upon the recordings written by Mrs. Lo. He said they

"appear[ed] to be good reporting in the sense [of] 'go out and see what it looks like and come back and tell me.'"

He said a professional person is expected to do more than that. He said a professional person would set forth his or her perception of the case and all known facts and information and make a statement as to what is thought to be happening. Dr. Turner said Mrs. Lo's recordings lacked "the diagnostic evaluative component," they told what she said went on, without any interpretation of what she saw as being significant.

Dr. Turner expanded that comment so that it applied to all of the recordings in the files of both the Family Services Department and the Children's Services Department of the Society. He felt they were merely "reporting and administrative accounting." They were not what he would accept as being "a professional case dossier or case record." They lacked any statement of clear goals and the means to achieve them. They lacked comment on progress or lack of progress, on information desired and on wishes as to what might occur. Dr. Turner acknowledged that some of that might be surmised from the material, but one could not really read into it the goals the social worker sought to achieve. Without knowledge of the goals, one cannot assess whether



what was done was good or not and cannot determine whether or not adequate goals had been selected.

Dr. Turner was asked if the recordings indicated that a plan for the management of Kim's case had been devised as required by the Regulations made under The Child Welfare Act. His response was that the only plan he could see was to return Kim to her home and there was not much doubt about it. He felt that the recording essentially set forth implementation of that plan rather than the plan.

Dr. Turner acknowledged that Mr. Carter's recordings do contain some evaluative statements and expressions of his opinion and suggestions as to areas in which information was lacking. While Mr. Carter wrote of things to be done it was more in the sense of management rather than in the sense of devising a plan.

In cross-examination Dr. Turner was asked whether his evaluation of Mrs. Lo's performance should have been affected by her lack of expertise and experience. He was not prepared to agree that, within the limits of her expertise and experience, she had done a good job. He analogized to the situation of one who had never driven an automobile being permitted to drive one. He said one might say the driving was "not bad for a beginner," but would not say it was "good" driving or even adequate driving.

Dr. Turner said he criticized Mrs. Lo's performance. She should not have been placed where she was.

In the light of the circumstance that Mrs. Lo reported to Mrs. Harvey and Mrs. Harvey made the decisions, Dr. Turner's criticism was extended to be a criticism of Mrs. Harvey as a professional.

Dr. Turner adverted to his earlier testimony to say that a community-based child abuse team involving other institutions and professions provided some advantages over a child abuse team composed of personnel from only one agency. The community-based team helped to remove "red tape," inter-agency rivalry and professional jealousies.

He supported even the concept of a smaller child abuse team within the one agency. It can be convened quickly. The worker intensely involved in a case may miss some important part of it. There is an advantage to having someone in the background "to keep the broad picture."

Dr. Turner was asked to comment upon the fact that the Society was not represented by a solicitor in any of the proceedings in respect of Kim in the Provincial Court (Family Division) of the County of Lambton during her lifetime.

He said that it was common, "especially [in] the more routine court appearances, if one can ever talk about them being routine," for children's aid societies to be represented by members of their staffs, called "court workers," who were not solicitors. He said that involved some risk.

When it was suggested to him that Kim's was "a notorious case even at that time" and was one where the court worker should not have appeared on behalf of the Society, he replied:

"Yes, yes, I have only surprise at that one."

I interrupted to ask Dr. Turner if he would regard Kim's case as being a "routine case." He replied:

"No, I would think one of the underlying discomforts I have is it the theme I referred to earlier Your Honour, is how worried was the agency about the possible outcome of this case. I think in view of its potential for its explosiveness in so many directions that the agency would have taken every possible step to ensure that everything was done as carefully and thoroughly as possible."

He explained that that would have been his view of the matter in 1975 and 1976 because even then it was known that a lot had occurred in the case.

Dr. Turner was asked to comment upon Mrs. Harvey's testimony to the effect that, at a time

about or preceding the hearing of the Society's application for wardship of Kim in February, 1976, she had decided that Kim was to be returned to her parents. He was aware that Mrs. Harvey was a supervisor in the Society.

He appeared to struggle to find some basis which might have supported such a decision. His reply, interspersed with supplementary questions, was:

"A. No up until then, I think all we have was indications of potential trouble.

Q. Yes. Negative factors and lack of information.

A. Yes and that is as I've said several times, Your Honour, is the most concerned as I think in your assessment it's your strengths, your limitations and what are the gaps. What don't I know here that might worry me and I think given the bad news and given the gaps in the information, it's hard to imagine coming to a decision to gamble on a possible favourable outcome. And the gamble is the word because we do know that all parents don't necessarily continue to abuse but here we had enough of a history of abuse that it wasn't...it was clearly not one of the one incident cases that we sometimes meet. We had at least...

Q. One incident of abuse.

A. Yes, we had at least four I think by then - three or four.

Q. And perhaps more.

A. Perhaps more."

In another response to a similar question he said he could not see how Mrs. Harvey could have made that decision then and he found it "a most surprising and troubling position." He said he could see someone such as Mrs. Harvey setting Kim's return home as a goal to be achieved in the long term, perhaps two or three years, but he was worried because Mrs. Harvey's decision seemed to be "a very

clear decision." The decision was all the more surprising in the light of Mrs. Harvey's testimony that she suspected Kim had been abused by Jennifer Popen and there was not yet any explanation for the injuries.

He continued to say:

"...It would be then...mandatory is the word that comes to mind from a professional responsibility viewpoint to review all the information and to consult with one's colleagues, either within or without the discipline to ensure that this decision that she had arrived at is one that appeared to fit the information that we had. I think because of the risks involved, you would want to be sure that you had arrived at the correct decision because the information as we understand it seems to be contradictory to the goal to return the child home so you would want to be awfully sure that you had a lot of reason why you had reached such a decision."

Dr. Turner's attention was then directed to Mrs. Lo and her performance of duties. He said that in an earlier stage of the development of social work the social worker was referred to as the friendly visitor. From reading the recordings which Mrs. Lo placed in the files at the Society, Dr. Turner sensed that Mrs. Lo was such a person, a friendly visitor to Jennifer Popen, one who was

"very well meaning...concerned about the family...trying to do her job of relating to the family and helping prepare the family for the return of the child [Kim] which seems to have been the only goal that was evident there and I think friendly visitor without...with a naive quality about it but it could well be a lack of knowledge and a lack of skill."

I accept Dr. Turner's assessment of Mrs. Lo and her activities relevant to Kim's case. She had good intentions and she tried to do what she felt was required. Her attention was directed to the one end, Kim's return. She lacked the skills and knowledge



and experiences to develop and expound any other goal. She certainly was a friendly visitor, and was concerned for the well-being of the Popen family, but, with all of that, she was naive. It appears that until July 26, 1976 Mrs. Lo did not realize that Jennifer Popen might have been deceiving her.

Dr. Turner went on to say that the recording made by Mrs. Lo indicated that some sort of relationship, contrived or not, was developing between Jennifer Popen and Mrs. Lo. He said there were indications that Jennifer Popen was "opening up a little bit" to Mrs. Lo. He said that the recording implied a "little bit" of the history which he felt should have been prepared by the Society. This led Dr. Turner to believe that it would not have been difficult for the Society to have prepared that history.

In that connection, Dr. Turner mentioned particularly Mrs. Lo's recording under date of February 27, 1976. She set forth there some of what Jennifer Popen had told her. Dr. Turner spoke of Jennifer Popen's references to her parents and hard times in her past. In his opinion that would have given Mrs. Lo an opportunity to pursue the history.

I have read that portion of Mrs. Lo's recording, it is part of Schedule 2-E to the Report. All that Dr. Turner mentioned in his testimony is there with some specific details. And there was more, including reference to Annals Popen's "drinking problem."

The first sentence of the second paragraph of that recording is "Jennifer [Popen] was very talkative today."

I share Dr. Turner's opinion that with Jennifer Popen in a talkative frame of mind a social worker possessing reasonable skills, knowledge and experience could have exploited the situation to gain information from her to form part of the history of the family.

Dr. Turner said that Mrs. Lo did not capitalize upon the opportunity then afforded to her. He said:

"I think it didn't register with her..."

Dr. Turner noted that Mrs. Lo's recording contains no reference to "those very serious events [in Jennifer Popen's life as a child in Jamaica] that came out in the psychiatric investigation."

Dr. Turner observed that Mrs. Lo's recording, written in a "friendly visitor" style, show that she seemed to accept rather naively what Jennifer Popen told her. He spoke of the "unevenness" between the talkative, co-operative almost friendly Jennifer Popen described in that recording and the "hard indication" of more than one incident of abuse to Kim. In his opinion a social worker should have been quite sceptical of a lot of what Jennifer Popen said, but there was no indication that Mrs. Lo questioned what she was told.

Mrs. Lo's recording contained only one item which Dr. Turner described as forming part of the "assessment component" of a case record. It was found in a paragraph entitled "assessment" and was the penultimate paragraph of the recording under date February 27, 1976. In Dr. Turner's opinion the paragraph was "really not assessment," but it concludes merely with Mrs. Lo's expression of lack of understanding, wonderment and uncertainly as to whether she really knew what the situation was and whether it was beyond her.

Dr. Turner then turned to the reference in Mrs. Lo's recording under date of May 7, 1976 wherein she wrote of the decision to return Kim to her home on May 27, 1976, but to discontinue her visits to her home in the meantime. He felt that was a surprising decision and contradictory of the recording under date of May 6, 1976. In that earlier recording Mrs. Lo wrote of deciding that Kim

"should either be returned home as soon as possible, or home visits be stopped and Kim be returned after her parents are adjusted to the new baby."

Dr. Turner recognized the validity of consideration being given to Kim's return, but he found the decision to discontinue preparatory visits to be "quite surprising."

In that same recording under date of May 6, 1976, Mrs. Lo had written:

"Her [Kim's] behaviour regressed every time after her visit at home."

Dr. Turner regarded that as a matter of some significance, a signal that a social worker would be looking for. He felt it was no more than that, but it should have been analyzed. The recording contains no such analysis or statement of conclusions drawn from the observation. Dr. Turner spoke of a number of questions that might arise in connection with the observation. He concluded with the sentence:

"and at least they noticed that it wasn't going well, but how they interpreted it is what we don't know."

Dr. Turner expanded his comment to acknowledge that observation of the relationship between Kim and Jennifer Popen had been made by Mrs. Saul on the very first visit by the Society's personnel on June 17, 1975. Mrs. Saul had written in the recording in the Society file under that date:

"I [Mrs. Saul] was amazed at how upset the child was when Jennifer [Popen] held her and in particular, prepared to feed her."

Counsel referred to the procedure followed by the Society in deciding upon Kim's return. Dr. Turner said that the procedure should depend upon the organization of the children's aid society. Some one would have ultimate responsibility, but, if there were a collegial meeting, the views of all present and the positive factors, negative factors and risks should be thoroughly reviewed. The method of operation of the agency would determine which worker's view would have the greater weight. He did not appear to be critical that Mrs. Harvey's department had supremacy in Kim's case.

Dr. Turner was not unduly perturbed when advised of Police Constable Wyville's remark to Mrs. Harvey, in the presence of others, in February, 1976 that, if Kim were returned to her parents, she would be dead in three months. He said any such remark would have to be heard and weighed by a



diligent social worker in the light of all other factors and in the light of Police Constable Wyville's knowledge of the case. He agreed that such a comment from a police officer would be "a red flag," particularly if the Society had known the officer, worked with him and developed a respect for his opinion. Even if the children's aid society involved had such a relationship with a police officer who expressed such a comment, it might still be appropriate for the children's aid society to disregard the caution because of the weight of other factors.

Counsel asked Dr. Turner to comment upon the fact that Kim was not completely undressed during any of Mrs. Lo's visits. Dr. Turner said that it was common for a social worker in such a case to be accompanied by a nurse during such visits. He felt that practice would have been desirable in Kim's case, especially because there was

"more than enough indication that it had been more than the chance occasion abuse."

and because of the appearance in appropriate literature of suggestions that abuse is a recurring thing. The Society was trying to decide whether or not Kim was being abused; so its plan for Kim's care should have contained some provision for her to be examined and assessed regularly, perhaps bi-weekly or monthly. The exact nature of that provision depends upon a variety of factors and is a matter of professional judgement.

In summary on that matter of absence of examination and assessment, Dr. Turner concluded by saying:

"...you would have to question that it was not ever done whether by Mrs. Lo or a nurse."

and

"...the concern is that it was not done. I'm not too prepared to be firm on whether Mrs. Lo should have done it each time or not. The agency [the Society] should have ensured that it was done some way."



Dr. Turner expressed the thought that even if Mrs. Lo had examined Kim she might not have recognized some injuries.

Dr. Turner said that some of the injuries revealed upon the post-mortem examination, which would not have been seen unless Kim's clothing had been removed, were "not uncommon" and that social workers must be very alert with respect to that type of injury. It would seem that reference was to the injuries to Kim's pelvic, vaginal and rectal areas.

In response to my question he enlarged upon that to say that, even in 1975 and 1976, it was known that certain injuries, such as particular types of fractures, were almost invariably the result of abuse. He said there was need for co-operation between physicians and social workers. He suggested that the Society should have inquired of a paediatrician as to how Kim's fractures might have been caused.

When asked about the absence of any plan or arrangement by the Society for the regular medical examination of Kim, Dr. Turner replied:

"A. Again, most surprising to me and I don't have a clear recommendation that this should have been done rather than that. I can imagine four or five ways one could have arranged this, but surely in view of the risk and in view of what we know from other cases, that parents can learn to hide these injuries and these injuries we know were recurrent in this case. You've already heard that that was clear. It is most troubling that some arrangements weren't made to...for some regular kinds of assessments. In fact, one could have built into your plan with the case but it could have been done a facilitative way where the mother came to the agency with the child and used that...could see her and the child being checked or else you could [do] it in different ways and the other troubling factor is that the worker did record the statement of the mother and the father and that the child was hurting herself. It should have been done without that and with

that further indication that that was happening, it's just impossible not to wonder why it did not happen."

Various portions of Mrs. Maughan's monthly reports were mentioned to Dr. Turner and he was shown particularly her report for the month of July, 1976. In it Mrs. Maughan wrote under date of July 18, 1976:

"The atmosphere was so charged with resentment and anxiety that I confronted the Popens immediately on the obvious change in feeling from our previous contact. After an attempt to ascribe the change to trivialities, they decided to trust me with their feelings which I feel are totally justified. Mrs. P's treatment by a representative from another community agency is humiliating to a proud woman who has committed no crime and is not being shown the courtesy she is entitled to."

Dr. Turner testified that that comment by Mrs. Maughan reflected a common problem. The problem arose because our society has a rich array of resources to assist people. But the resources and agencies are complex. There is a danger that there may be an overlap or a gap. Some people may be overserved by the agencies, others may be underserved. Inevitably strains develop between or among agencies.

Dr. Turner said that it would be desirable if competition or conflict between agencies could be removed, but he recognized that they do exist. He said that demonstrates the need for ongoing discussion by all persons engaged or involved in any case. He said that ways must be found to overcome the problem of workers from different community agencies giving one family conflicting advice or opinions.

Dr. Turner stressed that the needs of the persons being served required that the serving agencies work together in co-operation. He felt that a satisfactory level of co-operation had not always been achieved. Jurisdictional problems still exist. Agencies tend to discount information from others or simply fail to inquire of others.

Dr. Turner said that all of that often results in the client being underserved. In his opinion Kim "was very much underserved."

Dr. Turner spoke of the case of Maria Colwell in England which had attracted interest in child welfare circles in Canada. In that case a committee was appointed to inquire into the circumstances surrounding the care and supervision of the child. The committee's report was published in 1974. That report dealt at length with the matter of inter-agency co-operation and inter-agency difficulties. Dr. Turner said that such difficulties were the result of many factors. Some of those factors were rooted in the personalities of the personnel of the agencies. Some were caused by rivalry between agencies seeking funding from a common source.

Dr. Turner would not have expected children's aid societies in Ontario in 1975 and 1976 to have been aware of that case. He did say that he and others who read the report upon the case realized that, with some changes in terminology, it could apply to any children's aid society in Ontario.

He suggested that the case of Maria Colwell was a leading case. Social workers were the expert witnesses. Social workers were the most severely criticized for their handling of the case.

He said that while the Maria Colwell case provided a base for much knowledge, some of the messages contained in the report thereon had not yet been heard in Ontario.

Certainly they had not been heard, or, if heard, had not been acted on by the Society before Kim died.

Dr. Turner mentioned a different type of case which arose in the United States of America. In that instance over twenty community agencies provided services to one family and each agency had little awareness of what the other agencies were doing. A *fortiori* there was little co-operation among the agencies.

In Dr. Turner's opinion co-operation between and among agencies can most comfortably be



accomplished at the level of the individual professional workers. He felt that was where co-operation would be operational.

He then went on to express what seems to me to be a very sad commentary, the truth of which was borne out by testimony upon the Inquiry. As recorded in the transcript of his testimony, he said:

"...I think it is that humility that every professional must accept that he or she doesn't know everything about every case and I think that that is why it is so difficult to get at it sometimes...that there is no one who who isn't for cooperation. Everyone is...there is no one who will not support this but we've had terrible time in operationalizing it and we become quite precious about our cases and it's just a vested interest because I think the testimony that others have given here ...we're very much in an era where a question of confidentiality and access to public records is just so much to the fore that people are reluctant to share information without being aware of what the implications of this might be. Especially since so much professional judgement is a ...it's very nature judgement. The physician who says 'I won't go to court, but I'm pretty darn sure this elbow could not have been broken in this way.' The social worker who says 'I just know there is something wrong in this family and we've got to do something about it.'

One thing that has been working, although the size of the community is a factor, is community-based child abuse teams. I spoke earlier this morning, Your Honour, of the responsibility of agencies who have this responsibility be it hospitals, or children's aid societies to have an internal multi-discipline teams who can move quickly and clearly on these cases. I see some advantage too of cross agency voluntary, not legislated, child abuse teams and these are working...where the community really commits itself to sharing responsibility



and where the jurisdictional fights can be fought out not over cases where how can we find a way of making sure this doesn't happen. I know there was some very exciting developments taking place between say hospitals and children's aid societies where information is shared...where the police are finding ways of sharing information in a way that both protects the rights of clients and society and on people who make complaints as well as ensuring that we don't lose cases. Whether we should legislate it and the whole question of whether there should be penalties for failing to report and this type of thing obviously is being fought out now."

A little later he continued:

"A. But the problem is that...it's so easy for me to say it of course...what we want is to know about these cases the first time somebody shows a concern, not the sixth time or the fifth time. It's when this teacher is just sufficiently convinced of the young child in nursery school that that bruise is to be noted. When the nurse at the clinic, or the social worker and the difficulty here is that these are impressions and it is to find ways that we can identify and at least begin to gather this information because so many of the things that we get into situations where we must report and then people are going to have to wait until they are very certain before they're going to report.

So I guess I'm somewhere between that the legislation should be stronger but we must through our professional associations just keep working on this whole process and the process of training professionals of this responsibility to work together.

But that's not a new one Your Honour. That's been a problem for many years in our society."

I infer from Dr. Turner's testimony that problems such as arose in Kim's case have been known to exist for years. People speak piously of trying to overcome them by co-operation, but in practice, perhaps regardless of the agencies or professions involved, complete co-operation is difficult of achievement because of the particular views, concerns or interests of the agencies and professional persons and because of external factors.

Counsel referred Dr. Turner to Mrs. Lo's recording in the files of the Society where, under date June 17 to July 6, 1976, she had written:

"Jennifer felt that Kim is playing her trick of one parent against the other again. Sometimes Kim would be very hard to discipline in the daytime but when Mr. Popen came home from work she would become a sweet little girl that Mr. Popen could not believe what Jennifer had told him about Kim. Since Kim was an active child, she often bumped into things and hurt herself. Mr. Popen was not happy about it and thought Jennifer should watch her more carefully. He said he did not mind if supper was not ready when he was home from work but Jennifer should see to it that Kim did not get hurt. He was afraid that C.A.S. was going to take Kim again.

Several days later I was able to confront Mr. Popen with this, and reassure him that we fully understood children did get hurt accidentally, but he should be practical and realize that Mrs. Popen could not keep her eyes on Kim all the time."

Counsel inquired as to the significance the matters mentioned therein should have for a "reasonably diligent trained social worker."

Dr. Turner's reply was a damning observation upon the performance of the Society and particularly Mrs. Harvey. He tended to excuse Mrs. Lo somewhat because of her lack of experience. He felt that Annals Popen knew all was not well and tried to tell Mrs. Lo.

His entire response, with two short questions interspersed for clarification was:

"A. I think in view of what we knew about this family up until this point and that this was probably...I have it marked in my notes...one of the most frightening sentences in this record. That we at least had indication that there were some other injuries taking place and the term, Your Honour, is almost classical, but that the parent frequently says the child has a habit of bumping into things and that very often is an indication of further abuse that has taken place and too, what is troubling of course is that it was heard and reported and I'm not sure you could expect that Mrs. Lo should have appreciated the significance of it. That I think is probably not...

Q. In view of her lack of experience?

A. Yes, very much because it is such a low level indicator...not a low level indicator but such a hidden indicator, but it's a well known indicator that one should be looking at...that one should have worried about this a great deal and I would presume whoever read this recording should have responded to this very quickly.

Q. The supervisor should have picked that up.

A. Oh yes absolutely. I think, if I can venture an opinion, it sounds like the father knew it too...at least, knew something was not well and told the worker that.

Q. Or tried to tell her.

A. Tried to tell her."

On the testimony of some of the personnel of the Society, counsel suggested that Mrs. Lo's notes might not have been transcribed promptly even though she reported orally to Mrs. Harvey.

Dr. Turner's response was to the effect that to prevent any delay in recording of information some agencies have developed systems, stringently enforced, to require the transcript to be prepared right away. He said that was because a worker might observe and record something, but the full significance of the observation is not realized until "someone else," presumably a supervisor, reads the recording.

Dr. Turner was asked to comment upon Mrs. Lo's recording under date July 7-23, 1976 where, in part, she wrote:

"On my last visit we talked about Jennifer's fear towards C.A.S. Realizing that I was able to acknowledge her feelings, she honestly admitted it and we spent quite a while discussing the subject. It was indicated that C.A.S. is not asking for either a supervision order when Society wardship expires. I will be visiting on a friendly and supportive basis."

He replied that, in his opinion, there was no basis upon which Mrs. Lo, at that stage of the development of Kim's case, should have decided that the Society did not wish a supervising order. He said:

"...one can only be surprised at that kind of statement."

When it was put to Dr. Turner that Mrs. Lo was reporting to Mrs. Harvey after every visit to the Popen home and that Mrs. Harvey was making the decisions in Kim's case and that, therefore, his criticism should be of Mrs. Harvey and not of Mrs. Lo, he replied:

"Yes, I have no problem with that, my criticism certainly professionally is to ...as a colleague, Mrs. Harvey, yes."

Dr. Turner was asked his opinion as to whether a charge against parents under section 40 of The Child Welfare Act, concurrent with an application by a children's aid society for custody of the child mentioned in the charge, should be joined with and



heard jointly with the application for custody. I infer from his reply that he feels each situation must be viewed upon the basis of its facts before one could decide whether or not to join or consolidate the two proceedings so that they would be heard together.

Dr. Turner had some reservations upon the advisability of joining the two proceedings. He felt that some social workers, in the setting of a prosecution as opposed to an application to declare a child to be a child in need of protection, might be inhibited in expressing their professional opinion or their testimony may appear weak when viewed from the perspective of the standard of proof required upon a prosecution. His fear was that in such a setting the best interests of the child might not be the paramount concern of everyone involved. In such a circumstance he would recommend that the two matters proceed separately.

In summarizing his testimony and opinions in relation to the subject matter of the Inquiry, Dr. Turner expressed his constant concern as to the competence of persons who are responsible for the management of cases of very violent abuse of children. He said this was a problem for children's aid societies in relation to their resources.

He said that persons charged with such responsibilities should have full and ready access to all available knowledge, skill and research in the field. While recognizing that he, employed as he was, might be criticised by others, he recommended that:

"every person carrying a social work function in Ontario should have a Master's or a Doctorate degree in social work."

Even if that were not so, he felt that in Ontario those who have the responsibility can indeed do better than

"we have done in setting out some basic requirements and making sure that people meet them."

In his opinion responsibility for competence must lie upon the individual as well as the agency. He suggested that, in the event of incompetence, the individual should be subject to sanction. I inferred that he felt that presently there was no sanction that might be imposed to seek to prevent the recurrence of any "bad" service by an individual.

Dr. Turner said that he was not aware of the extent to which children's aid societies had used available knowledge and the "rich literature now developing in the whole field of child abuse." He was not aware of the extent of the Society's library or even if it contained "basic texts on child abuse." He was not aware of the use to which that library was put. He spoke of training programmes available and used in Ontario to assist agencies whose personnel were less than fully-trained to upgrade themselves.

In that area I must note that there was no testimony to the effect that the Society had a library of any sort, let alone a library with texts, basic or advanced, on the subject of child abuse. No employee, officer or director of the Society made reference to any such literature or its use within the Society. No one cited any literature as a basis for any decision or action relating to the management of Kim's case. No one spoke of any literature even having been considered in relation to any such decision or action.

As to the use of training programmes the most telling testimony was that of Mrs. Farina. She quoted Mrs. Harvey, whose role in the Society was so dominant, as having said that the Society would not send anyone to a seminar sponsored by the Ontario Association of Children's Aid Societies to assist personnel of children's aid societies who were employed as court workers because "really the [Ontario] Association [of Children's Aid Societies] had nothing to offer that would be of help to this Society."

Not only was that the most telling testimony upon the point, it was virtually the only testimony. There was no specific testimony as to any programme or materials for the in-service training of the Society's staff.

Dr. Turner moved on in his summary to question how the Society had kept, managed and used its records in relation to Kim's case. Because those records lacked evaluative material he wondered if those of the staff of the Society who were involved with Kim's case recognized it as being as serious as it was. As he put it:

"...I think it is one thing to make a judgment call that this is critical and we're prepared to take a chance for the following reasons. It's another thing to make a decision not even knowing that you were playing with dynamite in the case and to have made a decision that this agency is committed to the enhancement and unity of family life and we'll always, regardless of the situation, work to putting families back together again. That's more philosophy than it is good professional knowledge."

That latter really expressed what seems to have happened. Mrs. Harvey, and through her the Society, was primarily committed to returning Kim to her parents. She did not recognize the dangers inherent in that commitment. When they were suggested to her she chose to ignore them.

Dr. Turner commented upon the action of the Society in taking Kim's younger brother into care following her death. He felt it was an action that should have been taken as "quickly as possible" to ensure that the Society knew what "the total situation was." He felt that section 20(1)(xii) of The Child Welfare Act would have been applicable and he would have had "no hesitation in enforcing it" because of what had "apparently happened to Kim."

Dr. Turner's understanding of statistical and research material available to persons engaged in the field of child welfare was that children were at high risk of abuse during the first two years of their lives with the risk reducing in the third and fourth years. After that they become more mobile and there was greater opportunity for others to observe them or even for them to escape. In addition, as they grow older they are less in the presence of their parents and, as a result, some of the high



stress levels sometimes present in the very close and complicated relationship between a parent and a child may be reduced.

Dr. Turner was asked to comment generally upon the manner in which the workers' recordings were entered in the files of the Society. The practice seemed to have been that one portion of the recording related to several visits or incidents over a period of days, weeks or months. Dr. Turner described it as "summary recording." He said that in some cases that practice was appropriate and acceptable. He was worried that the practice was not acceptable in Kim's case and indeed was "bad practice." A portion of this response is transcribed as follows:

"...this is bad practice, on the case where there are so many risks here, not to record I would think anyway on a daily basis, or on intervention by intervention, and I would support that, at least as a goal, that each time there is something happen on a case like this, that at least a note be made of it of some kind or another. Because I sense through this that people were saying 'as far as I can recall, this is what happened.'"

Dr. Turner had some familiarity with the Parent Effectiveness Training Course generally, but was not specifically aware of the one presented in the County of Lambton. He said it was a course to help "reasonably adequate[ly] functioning parents to be more effective adequately functioning parents." He did not believe it to be a therapeutic type of resource to be used in cases such as Kim's.

This led him back to repeat that the Society's files did not disclose any assessment of Jennifer Popen and Annals Popen. Any such assessment would be a factor in determining whether or not the Parent Effectiveness Training Course would be useful in Kim's case.

He was asked how effective the Parent Effectiveness Training Course might be if the instructor were not aware that the parents were involved in a case of child abuse. I think his reply



was most damning of the Society for placing Jennifer Popen and Annals Popen in that Course. He said:

"A. I think it's not only the question of being effective that would be worrying me as the point of it being almost counter-productive. I think that latter piece of information that I didn't have is troubling to me because we have tended...although I know some people who use P.E.T. and have seen it as being useful for younger children. It is tended to be seen more effective for adolescents and it is a communications model. It's a way of assisting people to communicate better but you are dealing with something much more than communications here and to put, I was going to say, throw, to put out a couple like this into a group of people who have ...were only in the usual disciplinary problems with which most parents have, I think is a great disadvantage to them. To the parents and to the group itself but that's another matter. Does that answer the question you're asking?

Q. Yes. And when you refer to the latter piece of information, did you mean in fact that the instructor...

A. Yes...wasn't aware. That's right. Because again, this is not just a programmed thing that anybody can use. I would consider that one would want to have at least some beginning knowledge of people that were in your group. It's not something that just...a canned program, if I can use that term."

That assessment of the value of the Parent Effectiveness Training Course in Kim's case points out how the Society's personnel, especially Mrs. Harvey and Mrs. Lo, deluded themselves and others. Attendance at the Course was mentioned at least in the recordings in the Society's files, in the pre-sentence report on Annals Popen prepared by Mr. Brouwer in March, 1976 and in Dr. Curtin's report in March, 1976. Each time it was mentioned as being a factor in a certain decision or opinion.

Mrs. Harvey's comment to the effect that the Course was all the Society could find is shown all the more to be pathetic and futile.

Dr. Turner acknowledged that he had difficulty in commenting upon the procedure followed by the Society to decide that Kim would be returned to her home before, rather than after, the birth of the younger child. The difficulty arose because he did not accept the validity or propriety of the earlier, more basic decision that Kim would be returned. However with that earlier decision having been made, he felt some effort was made by the Society to arrive at a professional judgement upon the second stage as to when the return would be effected. He said that there appeared to have been some effort to assess the situation.

Dr. Turner, questioning the earlier decision that Kim was to be returned, had no strong opinion as to whether the return should have been before or after the expected birth. Because of the evidence that Jennifer Popen had difficulty in coping even before the birth of her son in July, 1976, he would have preferred that Kim's return be delayed until after the household had adjusted to the new baby. He felt that could quite easily have been built into the plan for Kim's care, had there been one. He said a homemaker might have been helpful. In some ways he saw Mrs. Lo in that capacity, visiting regularly, even for short periods, on a structured or scheduled basis.

Dr. Turner spoke of a recent experimental project which indicated that the assignment of homemakers to some cases to supplement the services of professional workers could be beneficial in reducing stress within the homes.

Dr. Turner testified that it was "surprising to [him]" that the Sarnia Police Force, having received Dr. Jumeau's telephone call at about three o'clock in the afternoon of June 16, 1975, had not advised the Society until after ten o'clock the following morning.

Dr. Turner testified that delays in proceedings in court are of concern to social workers. In most instances it is of advantage to have any

question of wardship resolved quickly so that plans for the family and child can be prepared and implemented.

With specific reference to Kim's case he agreed that the delay in resolution of the Society's application for wardship of Kim was "a very lengthy delay". The application was made initially on September 8, 1975. It was finally heard and determined on February 25, 1976, five and one half months later.

Dr. Turner said that the full and proper role of the Society's personnel in Kim's case should have been multi-faceted. Mr. Carter's role was not merely to investigate and assemble evidence for presentation upon the application. An adequate fulfillment of his role would include assumption of responsibility for determining what could be done to assist the Popen family as a unit as well as to protect Kim. It would include an exploration of the past to gain an understanding of what happened and to learn of any other problems which might have existed.

In Kim's case there had to be some thought given to means to assist Jennifer Popen and Annals Popen to be better parents. As well consideration had to be given to the welfare of the unborn, but expected child of the marriage.

Dr. Turner felt that if Kim's parents refused to talk with Mr. Carter about Kim, Mr. Carter could simply have moved to satisfy the Court, on the basis of medical evidence alone, that Kim was a child in need of protection. I infer he meant that Mr. Carter and the Society should have made such a motion.

Dr. Turner did not accept that such an approach was necessarily desirable. He seemed to favour an approach whereby the social worker would employ special skills to gain the co-operation and confidence of parents who, initially, had been hostile and unco-operative.

Dr. Turner said that throughout Kim's case Mrs. Harvey should have been constantly weighing the various factors in the case to determine the correct goal to be set and the best way to achieve it.



He contrasted that sort of approach with the simple selection of a goal to return the child regardless of the opinions of others and the validity of those opinions.

Dr. Turner felt that Mrs. Lo would have been helped in her duties if standards for the handling of child abuse cases had been available to her. When a question was put to him which seemed to suggest that the publication by the Ontario Association of Children's Aid Societies in July, 1976 entitled "Guidelines for Practice and Procedure in Handling Cases of Child Abuse" was the first published set of such standards, he replied:

"I don't quite know what to contain in the word standards. Certainly the professional literature is quite rich on various indices that one may use, various types of indicators that are helpful. I am not sufficiently familiar with what the ministry has prepared nor what dates it has for it but there certainly are excellent resources around that I would certainly expect a person in a supervisory capacity to know about and, indeed, a practitioner should at least be aware of the relevant literature surely."

Dr. Turner acknowledged that he, like others, was concerned by the differences in the standards of service provided by various children's aid societies across Ontario.

He said that the uncertainty as to the minimum standards of service was of greater concern. He would expect to look to "the Ministry," by which I presume he meant the Ministry of Community and Social Services, for such standards. It was of concern to him that, while the Hanson Report of 1974 urged the setting of standards by the Ministry, none were set until 1977.

Dr. Turner was asked about the actions taken with reference to the infant Karie, after Kim's death. He expressed his professional opinion that a social worker would have had



"more than enough professional evidence to indicate that this was a continuing high risk..."

He said that he would prefer

"to err on the side of protecting the child and have to be told by the court that you can't do it than the other way around."

Dr. Turner did acknowledge that sometimes veteran social workers, who had been chastised by a court for unnecessary apprehension of a child, may be hesitant to apprehend a child in some circumstances.

He said that at one time children's aid societies had a reputation as "baby snatchers." He seemed to relate that period of time to the period when the societies' budgets were based upon the number of children in their care and the number of days the children were in their care. He said that at that time a society which had a good preventative programme and took few children into care suffered in that its budget was smaller as a result.

I interpret some of Dr. Tuner's testimony to be that there is a variable ebb and flow in the relationship of parental rights and the perceived need for apprehension of children so as to protect them. He felt that for a period of time following a case such as Kim's

"the children's aid could do no wrong in removing a child,"

but, in time, there is a reversal and

"there will be tremendous criticism about trampling on the rights of parents because the child was removed unnecessarily or apparently unnecessarily."

He said that all of that would certainly pass through the mind of a social worker confronted with an emergency situation such as Mrs. Dick found at the hospital on August 31, 1975.

Dr. Turner felt that each children's aid society should have a process whereby each worker

would be evaluated on a regular basis. He had some doubt as to the method whereby the local director of a children's aid society might be evaluated. However he supported the concept of "peer evaluation" which would come about if there were a system of accreditation of children's aid societies conducted by qualified, professional persons.

In view of the organization of the societies in Ontario he indicated that "a non-official accrediting system" might not be sufficient. I infer he felt that any system of accreditation of children's aid societies would have to be under the aegis of the Ministry of Community and Social Services.

He suggested that inherent in any such review and accreditation would be procedures for the removal of any person who was not satisfactorily performing the duties of his or her position in the children's aid society.

Dr. Turner acknowledged that the relationship between the local director and the board of directors of a children's aid society could place the board of directors in a position of dependence upon the local director for guidance. He hoped that the board of directors would be aggressive enough to overcome any such dependence.

He said that, while The Ministry of Community and Social Services had a statutory duty to advise, supervise and inspect the children's aid societies, the boards of directors of those societies also bore some responsibility. He said that in the past some members of the boards of directors of some children's aid societies had not recognized or fulfilled their responsibilities.

I asked Dr. Turner for his opinion as to the type of qualifications which should have been possessed by the various persons who became involved in Kim's case, particularly from June 17, 1975 forward.

He regarded the qualifications for the various classes of social workers set forth in The Child Welfare Act as being "the very minimum that people would have."

He said that an important question was the ongoing responsibility of each social worker to keep his or her qualifications current. He mentioned Mr. Khattab, the hospital social worker, as an example of one who had not done so. Mr. Khattab was not aware of the battered child syndrome. That failure to remain current was a matter of as much concern as failure to obtain qualifications in the first instance.

In the same vein he spoke of Mrs. Harvey. He said that she could be regarded as having full qualifications and apparently she was the best qualified of all social workers engaged upon the case. He said he would want to know if Mrs. Harvey had kept herself and her qualifications current. He would want to know if she was aware of the knowledge and research now available for application in given cases.

He spoke of a need for the setting of basic minimum standards of qualifications coupled with a requirements that the workers attain and retain qualifications currently acceptable.

He placed some responsibility upon educational institutions to recognize changes in practice and to incorporate them into their curricula.

He said too that society generally must recognize that people do abuse and kill children. It does happen, but many will not believe it. He said that social workers must recognize that terrible things are done to children and they must be prepared to accept the possibility that any report or suggestion of child abuse could be true. He spoke of having heard Dr. Bates in another setting. He accepted Dr. Bates' thesis that not only must social workers have a good knowledge of human behaviour and how it functions in a normal sense, but they must recognize that it may be distorted.

He suggested that in educational and training programmes for social workers too little attention was given to psychopathology. He said educational programmes have been intended to help people to be healthy and to achieve, but perhaps have "underplayed" the other side, the perverse or cruel side of human nature.



He said that in cases such as Kim's a little naivete can be very dangerous.

Dr. Turner said there were some excellent training programmes available to serving social workers to assist them to remain current. These were available through The Ministry of Community and Social Services. He said there was an abundance of literature. Some related to very complex research projects. Some was in the form of very readable tests. Films were available.

That discussion led him to return to his statement of "the necessity to work together, the team thing." He said some, by dealing with cases of abuse every day, became very skilled and confident, but others did not often become involved in such cases and so had to be alert to all that happened. He felt there was a professional responsibility to share acquired knowledge.

He said that while the resources were "really very rich" he was not sure of the extent to which they were used.

Dr. Turner acknowledged that in the years since 1975 and 1976 there had been a lot of "catching-up done."

He placed some responsibility upon the individual social workers to keep themselves current. He suggested that could be done by attendance at seminars and conferences. He said:

"...the annual conference of Children's Aids in Ontario is one of the better conferences that takes place for keeping up on things. One could hardly have been in a position of responsibility in a children's aid society and not know since the mid 60's that child abuse was being talked about. It has been available, yes, but I think this responsibility is hard to accept if you have been 20 years in the field that you need to upgrade yourself. I think that is a difficult thing - people say I have been in this business so long there's not much more I can learn. I am afraid that isn't true for any of us."



I cannot help but compare those sentences with Mrs. Harvey's statement to Mrs. Farina in 1975 that no one from the Society would attend a seminar sponsored by the Ontario Association of Children's Aid Societies, the same body as that mentioned by Dr. Turner, because

"really the Association had nothing to offer that would be of help to this Society."

Dr. Turner did not say it, but surely Mrs. Harvey in that remark to Mrs. Farina clearly demonstrated the existence of the very attitude that Dr. Turner described.

In saying that Dr. Turner did not relieve The Ministry of Community and Social Services of its obligations to keep the children's aid societies abreast of developments in child care, but he did feel that some pressure should come from the societies themselves. He felt the societies have to keep abreast of developments.

Almost the last sentence of his testimony was, in part:

"even if we could damn the Ministry for having done nothing, I still would hold that anyone who had set themselves up as the local director in an area to carry out the care and protection of children had the responsibility to be on top of the field."

That is a strong criticism of Mr. Lovatt.

But others of the personnel of the Society share the burden of Dr. Turner's comment that financial restraints upon the Society should not have prevented them from keeping themselves and their personal libraries current. A very few dollars would enable the purchase of two major text books upon child abuse.

Dr. Turner was not unduly concerned about Jennifer Popen's actions at the hospital on August 31, 1975 when she expressed a desire to remove Kim. He would not have regarded that as an indication that she had abused Kim, but it did fit one theory that a

mother sometimes sees a child as an object which she wishes to have near to her even though she is abusing the child.

He did say he would be worried by Jennifer Popen's actions had the physician said Kim was too ill to go home.

In either case the children's aid society in such a situation should have fully considered and assessed the mother's actions in the light of all of the circumstances.

In summary, as he concluded his testimony, Dr. Turner said that from the outset he would have regarded Kim's case as being a case of serious proportions. While it might be arguable as to exactly when that assessment should have been made by the Society's personnel he was certain it should have been made during the early weeks of the case.

He had some difficulty in satisfying himself that Mrs. Lo recognized it as a serious case. He said that Mrs. Saul on June 17, 1975

"at least had some perception that something was required here over and above one visit."

However he did not know to what degree any of the Society's personnel regarded it as being a serious case which might end with Kim's death in a few months.

Dr. Turner's own assessment of all of the factors known early to the Society:

"...was such that you would have put your money in favour, if not death, then continuing serious assault. The death may have been quasi accidental in what actually killed the child."

I move now to a review of Dr. Bates' testimony.

In addition to his general knowledge and expertise in the field of child abuse, Dr. Bates had had some direct involvement in Kim's case. He had

testified at the preliminary hearing and the subsequent trial of Jennifer Popen and Annals Popen upon the charge of manslaughter. To prepare for those proceedings and for this Inquiry Dr. Bates had reviewed the report prepared by Dr. Patodia after the post-mortem examination of Kim's body. Prior to testifying upon the Inquiry Dr. Bates had read the various consultation forms, admission and discharge forms and reports written by Doctors Singh, Thorp, Jumeau, McCrudden and Bennett produced as exhibits upon the Inquiry.

Dr. Bates reviewed the contents of the post-mortem examination dealing firstly with those set forth under the heading "External marks of violence." He testified that some of the injuries described therein were such as to lead him to form the opinion that Kim had been physically and sexually abused. Some of the injuries might have been suffered in the normal activity of a child of Kim's age.

He testified that the multiplicity of bruises on Kim's body was "very striking." Many of them, if viewed singly in isolation from all of the other injuries, might be said to have arisen from normal activity. In that regard he mentioned the contusions over the forehead near the hairline, over the ear and on the chest, elbows, forearms and cheeks. He then said:

"...but it's most rare that one finds in any child such extensive bruising extending from the head right down over the rest of the body."

Dr. Bates expressed some concern about the discoloration of the nail bed of the left thumb. It could have arisen in normal activity, but it is "not very common"; so Dr. Bates was unsure of its significance.

He felt the contusions over the buttocks were unusual. While children may fall heavily on their buttocks in play, they do not usually bruise in that area because of the presence of fat and muscle.

In Dr. Bates' opinion, bruises to the genital area, particularly such as the mark over the mons pubis and the contusions by the vulva and vulva



opening noted by Dr. Patodia, rarely arise from normal activity. He said that bruises in that area must raise more concern than would arise from a bruise on the forehead.

He said that bruising on the thigh, especially the inner thigh, should raise some suspicion, but not as much as that in the genital area.

Dr. Bates described the wide dilation of the anal opening as being of

"marked concern...and, if that is seen, child abuse must immediately be suspected without any doubt."

He concluded that response by saying:

"...From looking at the recordings here, the position of marks of violence...I would therefore say that the genital bruising and the anal opening being widely dilated are the ones of most concern and should trigger any person off to suspect child abuse immediately."

He expanded that in his next answer when he said:

"If I saw all the bruising here, aside from the bruising in the genital region and the anal area, I would have concern for the child and request from my team members that further assessment of the family be undertaken."

Dr. Bates was asked to comment upon the presence and nature of the genital and anal injuries. He stated that it is difficult to obtain accurate statistics in the whole area of child abuse, but his comments were based on impressions formed on his own experience and on discussions with other investigators in the field.

He said that, while insufficient research had been done in the area of sexual abuse of children, reports of rather extensive studies had been published. In most sexual assaults there is no

physical injury, such as bruising, to detect from a medical point of view.

Thus what happened to Kim did not fit the norm of sexual assault of children.

He said that in the available literature it is generally accepted that a majority, perhaps about seventy-five percent of incestuous relationships and sexual assaults are between fathers and daughters or by fathers upon daughters. The literature does not contain much reference to sexual assaults of children by mothers. It is known that mothers may play very passive roles in sexual assaults by their husbands on children and may play active roles by inflicting the assault themselves.

Dr. Bates said that in cases of child abuse it is extremely difficult to be "absolutely sure... who is the perpetrator." He felt that would be so even if one parent confessed. If one did confess Dr. Bates would nonetheless wish to

"look at both of the parents in depth anyway, but look at the reasons around giving that confession."

He continued his testimony to say that in the majority of families where child abuse occurs one parent inflicts the abuse and the other is passive in the act in that he or she suspects or knows or agrees to what is happening and does not protect the child. He said:

"It is most rare to find a situation where one of the partners in the marriage is not aware at all that the child has been abused or to find both of them actively participating in the abuse of the child...All I can say is that there is quite extensive bruising around this child's genitalia and, if a mother didn't notice that, she was negligent in her mothering abilities."

Whether or not Jennifer Popen inflicted those injuries she ought to have noticed them.

Dr. Bates summarized his testimony with reference to the external marks of violence to Kim as

described in the post-mortem report by agreeing that the injuries were consistent with injuries inflicted in cases of child abuse.

He then moved on to review other portions of the post mortem report which set forth Dr. Patodia's findings upon the internal examination of Kim's body and X-ray, microscopic and laboratory tests and examinations.

There were subdural and sub-arachnoid haemorrhages extending over the surface of the brain from the anterior to the posterior aspects and over the base of the brain. In Dr. Bates' opinion and experience such injuries were

"certainly consistent with child abuse...in a child where we find this type of injury, we must also make child abuse a high priority in our assessment."

The extensive bleeding in the scalp which, not surprisingly, was not visible externally, was consistent with extensive trauma to the head.

The presence of fibrosis in the area of the anus shows that injury to be an "old" one which was repairing. He did not attempt to assess the age of the injury. He said such an injury would be hard to produce and would require the application of considerable force. It would require the insertion of a large object into the anus on repeated occasions over a period of time. That would be very painful. In his opinion such an injury was "certainly indicative of wilfully inflicted force."

The congestion and oedema in the area of the hymen was not normal. It would appear there had been trauma to the hymen.

The haemorrhage over the capsule of the spleen was "undoubtedly" related to some form of trauma, perhaps a blow to the abdomen or rib cage.

The haemorrhage in the area of the left adrenal and left kidney may be consistent with abdominal trauma.



Having reviewed that post-mortem report, Dr. Bates formed the opinion that Kim had been badly abused and beaten.

Dr. Bates testified that the injuries revealed by the post-mortem report were not consistent with the explanation for at least some of them given by Jennifer Popen when she testified upon the Inquiry. In describing that explanation to Dr. Bates, counsel said simply that Jennifer Popen's testimony was that about a week prior to Kim's death Jennifer Popen had struck Kim's head, that Kim thereafter was irritable and more withdrawn and did not want to play, and that, on the day of her death, Kim fell from the porch and did not awaken.

Dr. Bates said that his opinion was based on the multiplicity of Kim's injuries and their nature. They were not minor injuries. There were very serious blows and genital molestation. He suspected there had been more than one blow to the skull.

Counsel asked Dr. Bates to express his opinion as to the professional duties or responsibilities of the various medical doctors who were involved in Kim's admission to, treatment in and release from hospital in March and April, 1975 as a result of suffering a broken arm. The question was addressed to the area of responsibility for reporting Kim's injury to any authority.

Dr. Bates replied that every physician has a responsibility to provide the best medical care possible for his or her patients. He has found that situations of abuse and neglect of children have been approached in various ways.

His own view was that such a situation was an emergency and had to be dealt with in an organized way. The physician who first sees the child patient has a duty to ensure that the child is adequately protected. The physician has a further responsibility to ensure that the parent receives whatever help is necessary.

He felt that it was important that any physician, admitting a child to hospital and suspecting that the child had been abused, should record in

the hospital chart any such suspicion and the basis therefor. He said it was important that "the clinician's provisional diagnosis of child abuse [be] written in the chart" and that the hospital have "some form of protocol to follow" when there is such a suspicion.

He did not see in Dr. Thorp's writing on any of the forms prepared in March and April, 1975 any suggestion of concern that Kim had been physically abused. Another doctor, looking at those forms at a later date, could be led to believe that Kim had been injured by accident.

Dr. Thorp in his testimony had said that he had found the situation "extremely suspicious" when he admitted Kim to hospital on March 22, 1975. That suspicion arose from the nature of Kim's injuries and Jennifer Popen's explanations as to how they had occurred. He said he had suspected then that Kim had been abused.

In the practice of medicine, general practitioners or family physicians frequently call upon consultants for advice and assistance in dealing with problems. The physician is not obliged to accept and act upon the consultant's advice.

The role of the consultant varies. The physician may merely seek a consultation without any continuing involvement of the consultant. Or the physician may seek a consultation and request the consultant to participate in the care of the patient. Or the physician may ask the consultant to see the child merely as a matter of interest.

Dr. Bates' opinion is that the consultant, like the physician, has a responsibility to ensure that the patient receives the best possible care. He said the responsibility is imposed by The Health Disciplines Act and the code of ethics of the medical profession.

As to Kim's situation in March and April, 1975, his view was that it required in-depth investigation. He said that children of her age at that time do not suffer fractures by rolling on their arms or catching arms in cribs. He felt that, if an infant of a couple of months of age, or even several

months of age, suffers a fracture, the medical practitioner must suspect that the child had been abused. Only "a good story" should remove the suspicion. I infer that by "a good story" he meant an explanation for the injuries which was reasonable in the view of the physician and consistent with the nature and severity of the injury.

Dr. Bates said that The Child Welfare Act imposed on all medical practitioners involved in a situation such as Kim's was in March and April, 1975, an obligation to report the matter to a children's aid society or Crown attorney.

In Dr. Bates' opinion Kim

"was showing the effects of physical abuse at that point [March 22, 1975]."

He expressed "concerns about what happened regarding that referral to the consultant and the subsequent management."

Dr. Bates was asked whether the consultant should be concerned about the consequences which might flow from the consultant's reporting the situation to a children's aid society or Crown attorney "over the head" of the physician who had requested the consultant's services. One such concern expressed upon the Inquiry had been that the physician might not refer other cases to the consultant. Dr. Singh, in his earlier testimony, had defended his failure to report the matter as required by The Child Welfare Act. One of the bases of that defence was expressed in the following exchange of questions by counsel and responses by Dr. Singh:

"Q. So you were well aware of the procedure if you had an abused child to call someone up at the children's aid?

A. Right. If it's child abuse and if it happens to be my patient, I should emphasize that, I would definitely report the child abuse to the children's aid or Crown attorney or police.



Q. You and I seem to be running into some difficulty, Doctor, as to whose patient it is?

A. That's correct.

Q. I suppose if you're the little infant you don't really care who your doctor is as long as it gets to children's aid.

A. You have to be a physician to understand. If I start reporting I will not get a single consultation from the concerned physician and probably I have to leave the town.

Q. If you what?

A. If suppose any physician requests a consultation my duty is to inform the concerned physician about my impressions. I can't overrule his judgement and go and inform the children's aid or somebody else, without informing the physician first.

Q. And would that affect your practice if you started to do that?

A. That's correct."

Dr. Bates' response to that was that if the consultant had any such concern it had to be faced. He felt the consultant having such a concern had to speak to the referring physician about it in an effort to acquaint the physician with the seriousness of the matter and the consultant's concern. He felt that the consultant was obliged and required to make a report to a children's aid society or Crown attorney. Dr. Bates himself had made such reports to a children's aid society after having been consulted by other medical doctors with reference to their patients.

From Dr. Bates' response to that question I infer he did not agree with the position taken by Dr. Singh in other areas of his testimony dealing with his failure to report to a children's aid society or Crown attorney in March, 1975. Dr. Singh had stressed that his only duty was to the referring

physician. Dr. Singh limited his duty to one of examining the patient and then reporting upon that examination only to the referring physician. Dr. Singh said authority for that was to be found in "The Medical Act or OHIP Act" which required him to give his written report to the physician

"[whose] duty [it was] to inform the children's aid society. That's because this is his patient; it's not my patient."

Dr. Bates' opinion was that a consultant, such as Dr. Singh was in March, 1975 in respect of Kim, was responsible to ensure that the matter was reported to a children's aid society or Crown attorney. He might have asked the referring physician, such as Dr. Thorp, to make the report. The important thing, in Dr. Bates' opinion, was that a children's aid society be informed. I infer from his response he felt the obligation to report lay upon both the referring physician and the consultant. They may agree that one or the other will make the report, but if the report is not made both bear the consequences.

Dr. Bates agreed with the suggestion that, in Kim's case, it seemed that each person involved in March and April, 1975 assumed that someone else should or would make the necessary report to a children's aid society or Crown attorney pursuant to section 41 of The Child Welfare Act, but, in the end result, no one made such a report.

In my view Dr. Bates' opinion as to the obligation of a consultant to report any case of child abuse or suspected child abuse is correct. I believe that Dr. Singh was in error in his understanding of the situation.

There was testimony that in November, 1976 Dr. Singh had provided leadership in the formation of a child abuse committee composed of representatives from various organizations and professions in the City of Sarnia and the County of Lambton. Dr. Singh has participated in the direction and operation of the committee. His testimony indicates that his current practice in cases of suspicion of child abuse closely resembles that which Dr. Bates suggested was

appropriate for consultants. Dr. Singh did testify that he adopted that practice only after he:

"requested the Board of the Hospital to give me the privilege and authority to bypass the general practitioner, to report this case to the children's aid or Crown attorney or to the Child Abuse Committee."

He believed he needed that permission because

"It's his [the general practitioner's] patient, it's his privilege and he can do whatever he wants."

My understanding of the testimony relevant to that Child Abuse Committee is that, while it was composed of representatives of other community agencies, it was centered on St. Joseph's Hospital in the City of Sarnia and its procedures primarily involved personnel of that hospital. I presume Dr. Singh's reference to "the Board of the Hospital" was to the Board of that hospital. He did not say what his practice was if the matter was referred to him in a capacity other than as a member of the staff of that hospital. Presumably he would do as he did in March, 1975. If so he would be in error.

Dr. Bates agreed that Dr. Singh's report dated March 27, 1975 had dealt with many of the factors Dr. Bates mentioned in his testimony upon the Inquiry. Dr. Singh had noticed the unusual injury. He had wanted a social history. He even had warned of the ultimate injury.

Counsel sought Dr. Bates' opinion as to the procedure that would have been appropriate when Kim was released from hospital on April 3, 1975. Dr. Bates suggested that a child abuse team in the hospital might have by then made certain that the appropriate report to a children's aid society had been made. He said that at The Sick Children's Hospital in Toronto it is the practice that, if a physician suspects that a child has been abused, the matter is referred to Dr. Bates, as director of the hospital's child abuse programme, or to another paediatrician assisting Dr. Bates in that programme. The matter is discussed with others such as the hospital social worker and a public health nurse. It



is then decided who will make the report to a children's aid society. It was significant to me that Dr. Bates said "who" will make the report; there was no question but that a report would be made and made at once by one of those involved or mentioned by Dr. Bates.

Dr. Bates said it was important that all members of the child abuse team know who has assumed responsibility for making the necessary report in the particular case. In the practice at The Sick Children's Hospital the child would be held in hospital until the children's aid society concerned in the case had approved of the child's release or, perhaps, even until a hearing has been held in provincial court (family division).

Counsel inquired of Dr. Bates as to whether it would be appropriate for a family physician to report any suspicion of child abuse to a child abuse team at a hospital which would then assume responsibility for any further action. Counsel suggested that such a procedure was proposed in the City of Sarnia.

From Dr. Bates' earlier testimony, I had felt that that procedure was, at least, similar to that which Dr. Bates said was in effect in Toronto. In response to the specific question Dr. Bates said that procedure was:

"a good idea because some physicians may not be able to call the children's aid because they want to continue with the family in a certain relationship, thereby they can refer to another team and they can do that. I think that's a very good way to look at it."

Dr. Bates' opinion was that the child in such case is the patient of the consultant and of the physician. He said the parents too become patients in the treatment programme devised for the case. While counsel did not state it, I felt that the question was put as a result of some of Dr. Jumeau's responses which indicated he had had some difficulty in differentiating the child and the parents as separate patients to whom he owed separate and distinct and, perhaps, conflicting obligations.

At a later point counsel did face the question squarely and ask Dr. Bates if a physician might be reluctant to report any suspicion of child abuse because the physician regards both the parents and the child as patients. Dr. Bates acknowledged that reluctance as being a "reality," but he felt it could be overcome by the physician's discussing the matter and suspicion openly with the parents. He felt that if the physician indicates a desire to help the family the parents will understand. They may even be relieved that they are to be helped. Dr. Bates felt physicians must face the problem to ensure safety for the children involved.

Dr. Bates said that the observation that Kim was dehydrated when admitted to St. Joseph's Hospital by Dr. Jumean on April 28, 1975 would not overly disturb him. However, in view of the child's past history, that observation or finding would alert him and cause him to look into the situation in more detail.

Counsel advised Dr. Bates of Dr. Jumean's testimony to the effect that he had not, on April 28, 1975 or during Kim's hospitalization at that time, read Dr. Singh's consultation report dated March 27, 1975. Counsel asked Dr. Bates his opinion as to whether Dr. Jumean should have reviewed his file on Kim as a part of his procedure on admitting her to hospital or treating her.

Dr. Bates replied that medical practitioners must be thorough. He expected that, even if Dr. Jumean were unaware of the copy of Dr. Singh's report which was received in his office, a copy of Dr. Singh's report would have been in the hospital file on Kim and available to Dr. Jumean.

Dr. Bates was told of the incident wherein Mrs. Hewitt had seen Kim with Jennifer Popen in the shopping mall and noticed Kim had black eyes and had reported that to Dr. Thorp who advised Dr. Jumean. Dr. Bates was asked his opinion as to what Dr. Jumean, the family physician, might then have done. He replied:

"I would expect that that would create concern within him for the child's welfare and that he might call the child into his

office to examine the child or contact the public health nurse or someone to further look into the matter."

Dr. Bates was told of Dr. Jumeau's telephone call to the Sarnia Police Force at about three o'clock in the afternoon of June 16, 1975 wherein he reported an allegation of abuse to Kim. He was told that the police did nothing until nine o'clock the next morning. He was asked if he would be concerned by that delay of about eighteen hours by the police. Dr. Bates' reply was:

"Yes, that would be of concern to me. I would be quite surprised that that happened. Of course, I'm not sure what the doctor said on the phone regarding the urgency of the situation."

Dr. Bates was not surprised or disturbed to learn that Dr. Jumeau had not made any inquiry of the Society after his telephone call to the Sarnia Police Force on June 16, 1975 and his office visit with Jennifer Popen and Kim on June 19, 1975. He felt that Dr. Jumeau might properly assume that if the police and the Society had visited the home they had decided upon an appropriate course of action.

Dr. Bates was asked, having regard to all of the events in Kim's life, including the proceedings in the Provincial Court (Family Division) of the County of Lambton, what he perceived as prerequisites to any decision to return Kim to her parents.

Dr. Bates began his reply by saying that whoever is to conduct the investigation into any situation such as Kim's and her parents must be convinced that the child has been abused. If not that person's assessment of the situation might be "jeopardized."

As an aside to that, I would express my belief that employees of the Society were satisfied that Kim had been abused, but they had not really determined and articulated the identity of the person or persons who abused her.

As a further aside I would comment that the validity of Dr. Bates' statement was demonstrated by



Mr. Khattab. Mr. Khattab did not believe that anyone could abuse a two-month old infant. His assessment of the situation was worthless. Presumably his belief affected his assessment.

Dr. Bates went on with the introduction of his reply to say that whoever investigates an incident of alleged child abuse must have had prior experience with cases of child abuse. He said that is so

"because there are many subtleties in child abuse that can be easily missed by someone who is not conversant in a problem."

As an aside, I note that the accuracy of that statement is borne out by the testimony as to Mrs. Lo's participation in Kim's case and the assessment of the quality of that participation. Clearly Mrs. Lo was inadequate because of her lack of knowledge and experience in child welfare and, particularly, child abuse.

Dr. Bates said that any investigation must proceed in an organized and orderly way.

In Kim's case an important factor was consideration of the incidents of fractures. That undoubtedly was an indication that she had been abused and required protection.

He said that it was essential and crucial that those developing a plan for the management of a case of child abuse have an "in depth assessment" of the parents and the family, including the child. He said that such assessment should not be "crisis oriented," but must look at the "core" of whoever may be suspected of abusing the child. Such an assessment would

"look at their childhood,...their functioning in their marriage, their functioning in the community, their feelings of themselves and how they view the child."

In that last regard, Dr. Bates would want to know

"What is the child? Is the child an object? Is the child something to fulfill

their needs? Is the child wanted?  
etcetera."

Some of the expressions used by Dr. Bates are surprisingly similar to those used by Dr. Turner to describe the psycho-social information he felt had to be assembled.

In Kim's case she had been very seriously abused. In such a case the best investigators, the police, should be involved to assist the doctors and social workers. Dr. Bates was glad that the Sarnia Police Force conducted an investigation.

He said that the involvement of police officers should not be solely for the purpose of prosecution of and conviction upon some criminal or quasi-criminal charge. It should be for the purpose of obtaining all available information so that a plan to improve the situation can be developed and implemented.

Dr. Bates testified that if, as the investigation proceeded, there is any indication that there is any "rather serious personality disorder or other abnormality within the family", a psychiatrist should be retained and involved.

In Kim's case Dr. Bates had understood there were

"some concerns about the involvement of the parents with this child on an emotional basis. There are concerns about [the] mother's childhood [and] about the marriage."

His opinion was that there were

"...innumerable things in this family history that would suggest that there should have been a psychiatric assessment of the parents prior to ultimate disposition of the child to the child welfare court."

Dr. Bates acknowledged the difficulty involved in obtaining the services of psychiatrists. He felt there were insufficient numbers of

psychiatrists with the particular expertise required in such cases.

The validity of that acknowledgement was supported by the testimony as to the small number of psychiatrists in the City of Sarnia and the County of Lambton.

Counsel mentioned Jennifer Popen's testimony as to events in her childhood including abuse, sexual abuse and her marriage at, she said, the age of thirteen.

Dr. Bates said that those matters would be "crucial" in investigation of the family and the subsequent case planning. He said that he would have grave concerns about the ability of a worker to assess the situation if information of that nature had not been obtained.

He said that what occurred in a person's childhood

"is undoubtedly the most critical factor that will determine eventually how that person is going to function as a parent."

That is, an expression of opinion similar to that of Dr. Turner.

He went on to say that that was why he believed specialists should look at

"these families to determine what happened before and...whether or not we can help them at all. But no we don't do that. We go on jeopardizing kids to prove that they are in need of protection and that's what happens."

I inferred that Dr. Bates had seen too many cases such as Kim's where the only question was "Is the child in need of protection?" and where the answer to that question was formulated upon inadequate information.

In Kim's case it would seem that the Society did not have enough information to decide the elemental question "Can Kim's parents be helped?"



In Dr. Bates' opinion the child in any such situation should be assessed to determine at what level of development the child is. There was no testimony upon the Inquiry to indicate that any such assessment of Kim had been made.

Dr. Bates said that all of this was essential to enable preparation of an adequate plan for the management of a case. That plan should be presented in the provincial court (family division) and, if the child is made a ward of the children's aid society for a fixed period of time, a plan should then be developed for the child's return and reintroduction to the home.

Any such plan should contain a "contract" with the parents outlining what is expected of them. What the parents can be expected to do to demonstrate their ability to "parent" the child would depend directly upon the prior investigation of the parents. The plan would have to be "tailored" to the parents. In that regard, while Dr. Bates felt that while

"parent effectiveness programmes are great things...[but] for a lot of child abusive parents [they] wouldn't help one bit."

Dr. Bates testified that re-introduction of a child into the home should be gradual. It should be achieved by visits in the company of someone with experience in child care and ability to observe what happens. I presume he meant the person should also be able to assess and evaluate the significance of whatever did happen or whatever was observed. He said

"...So few of our social workers have had child care training or experience yet we are entrusting our most precious commodity, our children, to a person who may not have the experience necessary to determine what is going on."

That Kim was entrusted to Mrs. Lo is an example of the basis for the concern expressed in that statement.

Dr. Bates said that the "contract" with the parents for the return of the child to the home would

provide that certain things, which he called "milestones," must be achieved by the parents before any decision might be made to return the child to the home. Such milestones might relate to the parents' marital, financial and personal problems, their counselling, their attendance at community groups, their use of community resources and their relationships with relatives.

Dr. Bates' position was that no decision to return a child to the home should be made unless and until the "contract" had been performed by the parents and sufficient improvement in the situation had been noted.

Dr. Bates' opinion was that the Ministry of Community and Social Services, from 1973 to 1977, "were not placing child abuse in a high priority despite the urgings of some persons that child abuse had to be treated "from a high priority standpoint".

When asked if that Ministry were being warned that child abuse was a major problem Dr. Bates replied:

"Well I know a number of persons in this province who have been concerned about this for a considerable period of time and in those years that you mentioned, concerned about the inactivity of the Ministry in becoming more actively involved. Now in 1977 and in this year [1978], they have really accomplished a great deal, but, prior to that, there were problems."

Counsel then asked:

"But if they were being warned, Doctor, back in 1973, '74, '75, in your opinion is there any justification for the Ministry not doing anything?"

Dr. Bates's reply was simple, direct and condemnatory. The reply was the one word

"No."

Dr. Bates testified that child abuse occurred "right across the Province of Ontario." While

children in all parts of the Province should receive the same degree of protection he recognized that that was not so in practice. The children's aid societies in some areas might be more progressive than others. Some areas might have greater resources on which to draw to provide service to children.

Counsel asked Dr. Bates if, assuming that the Ministry of Community and Social Services had a mandatory duty to advise and supervise children's aid societies in the field of child abuse, he felt that that Ministry "carried out that function between the years 1973 and 1976 advising local children's aid societies how to deal with child abuse."

Dr. Bates replied:

"Being an outsider from the point of view that I'm not within the children's aid or within the Ministry, I can only comment on that basis, but I do feel that they did not provide the guidance necessary."

Dr. Bates testified that even in 1973 "there was a considerable amount of literature" on the subject of child abuse. In 1974 and 1975 information as to how child abuse was handled in Ontario was "available if the Ministry had looked for it." The Sick Children's Hospital in Toronto had a programme in place from the mid 1960's to notify children's aid societies of cases of child abuse.

Counsel advised Dr. Bates of the memorandum dated July 25, 1975 from the Director appointed under The Child Welfare Act to children's aid societies in Ontario. In that memorandum the Director wrote of the formation of a child abuse committee within the Ministry. Initially that committee was to begin a process of self-education regarding child abuse. That would involve learning of activities outside of Ontario. The committee was said to be "developing a plan of action that will enable it to arrive at recommendations for inter-ministry approach to child abuse." Counsel mentioned Dr. Greenland's report to that Ministry in 1973.

Dr. Bates said he did not know what the Ministry had done with Dr. Greenland's report. I



might add that I recall no testimony upon the Inquiry that would have enlightened Dr. Bates on that.

Dr. Bates did say that "without a doubt" the Ministry should have been into the field of self-education about child abuse before 1975.

During a considerable period while he testified, Dr. Bates spoke in very general terms upon child abuse. He sought to define it and to demonstrate it as a problem. He displayed photographs of some children to illustrate portions of his testimony. Those photographs have been placed among the exhibits produced upon the Inquiry. They are placed in the sequence in which they were shown so as to enable any who care to do so to relate a photograph to a specific portion of testimony.

During this period of his testimony, Dr. Bates mentioned certain incidents in or about Kim's case to demonstrate the application of his testimony.

For relatively long periods of time Dr. Bates was not interrupted by any question from counsel. His testimony was presented as an instructional lecture by a learned professor. It was most helpful to me in its general terms and in its specific application to Kim's case.

He said that a physician, a public health nurse or a children's aid society worker may come upon a case of child abuse, but yet remain in a dilemma as to what child abuse is. Thus, it is important that all who deal with the health or social aspects of children have the benefit of educational programmes. They must be immediately aware of certain types of abuse and neglect.

Kim suffered a broken arm when only about six or eight weeks of age. That should have immediately brought to the minds of those then concerned with her care the possibility that she had been physically abused. When that possibility arose, the whole family situation should have been examined. If the possibility could not be displaced, a programme for management of the abuse and neglect should have been implemented.

I note that Dr. Singh, Dr. Lota and Dr. Thorp did recognize the possibility that Kim had been abused. Dr. Singh and Dr. Lota wrote of it. Dr. Thorp did not. But none of them did anything more effective than make that recognition. Dr. Singh did recommend some investigation by Mr. Khattab, but he did not ensure that his recommendations was acted upon. In the end his recommendation was not effectively fulfilled by Mr. Khattab.

That portion of Dr. Bates' testimony is a negatively critical comment upon the actions of all concerned with Kim's care upon, during and immediately after her hospitalization on March 22, 1975. The criticism is not that Kim did not receive appropriate medical attention, but that the true nature of her situation was not fully recognized and that no adequate steps were taken to correct that situation and to protect her.

Dr. Bates had referred only to one of Kim's injuries, the fracture of the humerus, on March 22, 1975. One is left to wonder how much more critical would his comment have been had he reviewed all of the injuries and illnesses Kim suffered and all of the persons who failed to take adequate measures to ensure her protection.

Dr. Bates then moved on to speak of sexual abuse as distinct from physical abuse.

In Kim's case, bruises, fractures and haemorrhages of the brain indicated she had been physically abused. Some of the bruises were in unusual areas, such as the genital area. They, with the erythema and oedema around the hymen and the dilation of the anus, were certainly the result of sexual abuse.

Dr. Bates testified that sexual abuse is known to occur, but is not dealt with in great detail in the available literature. It occurs quite frequently, perhaps as often as physical abuse.

Dr. Bates wondered as to how long Kim had been sexually abused before it was discovered. That discovery was made during the post-mortem examination.

He testified that whenever a child has any sign of physical abuse, the child should undergo a complete medical examination. That examination must be made by a physician, not a public health nurse or social worker. The child must be completely undressed and examined from the top of the head to the bottom of the feet.

There is no testimony to satisfy me that any such examination of Kim was undertaken before she was admitted to hospital on August 31, 1975. Dr. Jumeau did not do it. Dr. Singh's report of March 27, 1975 mentioned various aspects of physical examination, but it does not appear to have been as complete as Dr. Bates envisaged and there is no testimony of any more complete examination by Dr. Singh in relation to that time. Dr. Thorp's report of March 23, 1975 does contain reference to an examination of Kim's "skin, including the diaper area," for signs of bruises, but the examination does not appear to have been such as Dr. Bates recommended, and there is no testimony of any further examination by Dr. Thorp in that instance or until August 31, 1975. On and after June 17, 1975 the Society did not cause it to be done.

Dr. Bates testified that emotional abuse undoubtedly accompanies every situation of physical abuse. Emotional abuse may be more detrimental than physical abuse to the child. Again he mentioned the "subtleties" of abuse and the possibility that they were not recognized in Kim's case.

He said that medical care neglect, failure to obtain medical attention for a child promptly upon the occurrence of injury or illness, often accompanies incidents of abuse. He spoke of incidents where earlier fractures are revealed only by X-rays taken as a result of unrelated illness or injury.

In Kim's case the fractures of her ribs some weeks earlier were not revealed until X-rays were taken after her admission to hospital with a fractured arm on August 31, 1975.

He said that abuse and neglect form a broad spectrum. He said that in Kim's case



"...we can certainly see that there was physical and sexual abuse undoubtedly emotional abuse and I'm sure, a certain degree of emotional neglect and perhaps medical care neglect."

I believe Dr. Bates is too kind to whoever was involved in the incident in which Kim suffered the fractured ribs in the summer of 1975. There was no testimony upon the Inquiry that she received any medical attention for them. That satisfied me that Kim was a victim of medical care neglect within Dr. Bates' definition thereof.

Dr. Bates then moved on to a discussion of the Central Registry of cases of child abuse maintained by the appropriate Department or Ministry of the Government of the Province of Ontario since the mid-1960's. At the time of the Inquiry that Ministry was the Ministry of Community and Social Services.

Dr. Bates understood that the Central Registry was designed to receive reports from children's aid societies as to instances of abuse of children. He said that the number of such reports in 1977 greatly exceeded the number in 1976. He understood there were 1,045 such reports in 1977. He related that increase to publicity given by the media to incidents of deaths of children as a result of abuse. He felt that relationship was unfortunate.

I would note that Kim's death from abuse occurred in 1976, but it was not widely publicized and identified as such until December, 1977.

He felt that the statistics emanating from the Central Registry were not reliable. He understood that some children's aid societies did not complete reports promptly or adequately. Thus the number of reports filed is not an accurate measure of the number of incidents of abuse.

The validity of Dr. Bate's statement is supported by Kim's case. Her fractured humerus in March, 1975, her later illness, her black eyes, and her fractured ribs in the summer of 1975 were not the subject of any report to the Central Registry until September, 1975, after she was admitted to hospital with another fracture.

Dr. Bates pointed out that the matters reported to the Central Registry were related to physical abuse only. On the basis of his understanding of the number of incidents reported in 1977, the incidence of physical abuse was at a rate much below the rate suggested by studies in other comparable jurisdictions. If other types of abuse and neglect were added to incidents of physical abuse, the total in Ontario might, on the basis of those studies, be about 9,000 incidents of child abuse or neglect each year.

He said that a child who has been abused in one way may eventually be abused through the entire spectrum of abuse and neglect which he defined. Thus when one form of abuse is observed those managing the case should be aware that something more devastating may happen. He called it a "continuum of abuse," first observed as a failure of an infant to thrive and then proceeding to bruises and fractures.

Kim's case was an example of that. Her bruises and fractures were telltale signs of abuse. They should have been recognized as indications that more would happen.

Dr. Singh recognized it when he wrote, on March 27, 1975:

"...I would strongly suspect that the battered child syndrome is present and if we do not protect this child at the present stage, she might end up with a fractured skull or some other fractures later on in her life."

His prediction was accurate, even to the nature of the injury which caused Kim's death.

No one, not even Dr. Singh, followed up on his warning.

Dr. Bates regarded abuse of children in its broad spectrum as a major problem in our community. He did not use the word "community" in the sense of local or municipal community. It can form a cycle whereby an abused child becomes an abusive parent. He did not suggest that every abused child became an abusive parent, but he did suggest that every abusive

parent had been an abused child. He said that, on information which he regarded as reliable, perhaps a majority of the persons confined in the Mental Health Centre at Penetanguishene had been abused as children.

For that reason Dr. Bates felt that programmes to prevent abuse were essential. If successful they would break the cycle. That will involve moving back into the childhood of the abusive parents to try to learn the cause of their abuse of their children.

He said that requires adequate investigation. It is not done well enough. Persons who lack the necessary skills are assigned to the task of investigation. Too often the same person, after having investigated the situation and pursued it by proceedings in a court, is expected to provide help to the family. That person then may encounter the parents' hostility arising because of the investigation and court proceedings. That is a dilemma faced by children's aid society workers. It is hard to overcome.

I note that Kim's case presented some indication of that dilemma. There was some suggestion that Mr. Carter had some difficulty in dealing with Jennifer Popen and Annals Popen prior to the completion of the hearings in the Provincial Court (Family Division) of the County of Lambton. There was testimony to suggest that Jennifer Popen harbored some animosity towards Mrs. Lo while she supervised Kim's care and that animosity became so marked that Mrs. Lo noticed it late in July, 1976 after she advised Jennifer Popen that the Society would apply for an order of supervision.

I am satisfied that in Kim's case the Society did not, during her lifetime, make any reasonable effort to investigate the background and childhood of either Jennifer Popen or Annals Popen.

Dr. Bates testified that police officers were instructed in methods of investigation. He felt that physicians and children's aid society workers and public health nurses were not taught enough about how to investigate. As a result they do not report upon matters that are crucial to a determination of



the issue as to whether or not a child has been abused.

It would seem to me that that is what happened in Kim's case, particularly after her return to her home on May 27, 1976. She was abused severely and over an extended period of time between that day and the date of her death less than three months later. The abuse, the signs of which were so horribly apparent upon the post-mortem examination, was not detected or, apparently, even suspected during all of that time. During all of that time she was in the care and custody of the Society. During all of that time Mrs. Lo visited the Popen home often, Mrs. Maughan visited on occasions and Mrs. Kuly visited once, most recently the day before Kim died.

I recognize the limitations upon Mrs. Maughan and Mrs. Kuly. None of that applied to Mrs. Lo. Three possibilities exist. The first is that she was not aware and had not been instructed by Mrs. Harvey as to what she should be looking for and how she should proceed to find it. The second is that she was unable to recognize it when she saw it. The third is that there was a combination of the two. I tend to lean toward the view that it was a combination of the factors.

Dr. Bates felt that organization will be required to deal with the problem of child abuse. People with different professional or quasi-professional backgrounds are needed. Particular skills and expertise are needed. The organization would involve social workers, police, health nurses, and physicians and laboratory and X-ray facilities.

He believed that some problems exist for those who seek to deal with the problem. He said that too often reliance is placed upon the presence of physical findings and not upon the results of interviews conducted by such workers.

In that regard Dr. Bates seemed to be addressing what he perceived to be problems of having certain information or opinions admitted as evidence upon proceedings in court. He spoke of the desirability of social workers being qualified as expert

witnesses. He made the following statement based on his observations of proceedings in some courts:

"I think very often judges rely more on the physical evidence of abuse and less on the pathology detected by the social worker in the home and the implications of that pathology. It's for that reason that I feel that we need to have expert witnesses in the social work field to bring into the courtroom research and other data about the importance of the interview, the pathology detected. We know that if a parent has a certain background history, that it may be next to impossible to help them and that that child may be in jeopardy. May be in jeopardy not because of the injuries we see now but because that child is a special child for certain reasons that the parent can't stand and I'm going to talk about that shortly."

However his remarks are of perhaps wider application. When Mrs. Saul, Mrs. Hoad and Police Constable Gander visited the Popen family they largely confined themselves to a search for marks of physical injury. Mrs. Saul did become concerned by what she observed even in the absence of much in the way of physical marks. But nothing came of it. Police Constable Gander retained an interest for a short while.

One is left to wonder how different may have been the actions of those three on June 17, 1975 had they found, say, a large and colorful bruise or burn on Kim's body.

Perhaps that is another example of the problem stated by Dr. Bates.

Dr. Bates stressed the important of laboratory and X-ray facilities and personnel. An X-ray showing a certain type of fracture of an infant's bone, when supplemented by an expert's opinion to the effect that that type of fracture occurs only in cases of abuse, can tell the investigators that the child has been abused.

Dr. Bates expressed some concern over what he perceived to be the almost impossible task of having colour photographs admitted as evidence in court proceedings.

He then returned to his discussion of the causes of abuse and of the types of parents who may abuse children.

He said that persons other than the parents may abuse children. A great deal is known about abusive parents. It is known that some children are "high risk children" and that there is a factor which precipitates abuse.

He spoke of lack of mothering. This refers to the childhood of the abusive parent. He said it was "undoubtedly the most important factor in preparing a child to be a parent."

With direct reference to Kim's case he said Jennifer Popen was "destructive" and she was not prepared to be a mother.

Dr. Bates said it was crucial for case planning that the social worker obtain that information about the parent's childhood. He said

"if a social worker doesn't get that information, she is or he is grossly deficient in the ability to make a diagnosis on a family of child abuse."

From the testimony upon the Inquiry I am satisfied that the Society had not, during Kim's lifetime, obtained that information in respect of the childhood of either Jennifer Popen or Annals Popen. I accept Dr. Bates' testimony that such information is necessary for the preparation of a plan for the care of a child who has been abused and for any accurate assessment of the situation in that child's home and family.

In Kim's case the Society did not obtain the information. The decision to return Kim was made without adequate information.

Dr. Bates said that very frequently abusive parents are found to have been wards of children's



aid societies, to have been beaten and to have run away from home. Some have been sexually assaulted. Generally they do not have a good memory of their childhood. I would note that if Jennifer Popen is to be believed, something I am not prepared to do, several of those factors applied to Jennifer Popen's childhood. She was not a ward of a children's aid society, but she was placed with another family. She did not run away. She said she was beaten. She said she was sexually assaulted. She said her memory of her childhood was not a happy one.

Dr. Bates spoke of the "isolation" of the Popen family. He said abusive parents

"are isolated in our community, they don't use community resources, there is little contact or little help coming from relatives; they may be hard to find to make a visit say by the public health nurse, and in a sense these people shut themselves inside their home and very few persons really know what is going on in their life."

It would seem to me that that reference to "isolation" is particularly applicable to Jennifer Popen. There was testimony as to her feelings towards some of Annals Popen's relatives.

He spoke of a problem too in relation to the spouse or common law partner or friend living with the abusive parent. Frequently that person comes from a similar background. He or she may be passive, as Annals Popen was, one who tends to withdraw and to be introverted, one who does not communicate well and who cannot protect the child.

Dr. Bates' opinion was that even if one parent had the potential to abuse a child, abuse would most likely not occur if the other parent were a strong, healthy well balanced adult. However abuse may well occur if both parents have the potential to abuse. Abuse may well occur if one parent has the potential to abuse and the other has a passive personality.

Unfortunately for Kim, Jennifer Popen had the potential to abuse her and did abuse her.

Annals Popen was in the mold of the passive partner who did not protect the child.

Dr. Bates continued that he had noted in one of the reports on Jennifer Popen that she had a feeling of low self-esteem and self-confidence. He said such a feeling of hopelessness and inadequacy stems from the childhood of the abusive parent when he or she was made to feel worthless or like an object, rather than a person who was loved and cherished.

Another element of abuse mentioned by Dr. Bates was what he called "role reversal." He said that involved the parent's expectation, often unrealistic, for the child.

In instances where that occurs the parents want the infants not to cry, not to soil diapers, not to have colic and, in general, not to do the various things that infants do. Such parents expect abnormal children. Then, in such a case, when a child acts as a normal child, the parent does not recognize it as a normal development, does not know how to deal with it and feels rejected. Dr. Bates said all of that arises because the parent's childhood did not prepare him or her to be a parent and because the parent is isolated in the community and from the other parent in relation to problems and does not have a good feeling about himself or herself. The only "out" then, said Dr. Bates, is to hit the child to remove the crisis. The child may well be the crisis.

In this connection, Dr. Bates spoke of such a parent expecting the child to "feed well." Kim suffered injuries to her lips said to have been caused while Jennifer Popen was feeding her and experiencing some difficulty. That may be of some significance as perhaps suggesting that there was some presence of role reversal in the relationship between Jennifer Popen and Kim.

Dr. Bates went on to say that abusive parents do not give adequate explanations for injuries suffered by their children.

He related that comment to Kim's case. He asked how did Kim suffer the fractured humerus, a strong bone; how did she suffer the black eyes; how

did she suffer the other fractures? He said that if the explanation does not fit the injury one must suspect that the child has been abused. In apparently direct reference to Kim's case he continued:

"...Are people reluctant to give a story? Do the parents appear inappropriate? Do the parents appear to be inadequate in parenting abilities? And how can a person who is married at age 13 or 14 really fulfill a role as parent? It is very difficult when you have had a poor childhood before that, entered a marriage in early adolescence, not had time to mature, when one is going through puberty and then you are thrown into motherhood and you have missed so many stages of your life already. It all paints a picture of crises and problems to come later."

In my view that testimony of Dr. Bates is a strong condemnation of the Society, particularly Mrs. Harvey. It is a criticism that the facility or organization or procedure was not present in the Society to ensure that all of the necessary background information was obtained before vital decisions in the management of Kim's case were made. The most vital was the decision that she was to be returned to the care of her parents.

One is left to wonder what might have flowed from a change of attitude within the Society. Mrs. Harvey told Mrs. Farina that the Ontario Association of Children's Aid Societies could not tell the Society anything helpful. What might have happened had the attitude been that the Society could and would learn from others. Perhaps even one lecture from one such as Dr. Bates or Dr. Turner to Mrs. Harvey and the staff of the Society might have been enough to have saved Kim's life.

Having heard Dr. Bates as a witness upon the Inquiry, I feel I have developed some awareness of what one working in the fields of child care, child welfare and child abuse should be alert to notice and assess. How much more might those who had some training, knowledge and experience in those fields have gained from listening to Dr. Bates, Dr. Turner and other of their stature.



In Dr. Bates' opinion, child abuse is not "a one shot thing." It usually is a problem over a considerable period of time unless triggered by some acute crisis in the home.

Dr. Bates testified that the majority of very serious cases of abuse in his practice have been inflicted upon children younger than five to six years of age. He said that some who have investigated the field of child abuse believe that if a child has been seriously abused until the age of three or four years, there will be considerable difficulty to help that child become a healthy adolescent and adult able to "function on an interpersonal relationship in our community." He said the higher percentage of abuse is inflicted upon infants between their dates of birth and their third birthday, after that they seem to learn to avoid abuse.

Kim did not reach the age by which she might have learned to avoid abuse.

Dr. Bates then turned to a consideration of the types of children who, predictably, might be abused.

He said some children are unwanted. A mother may tell a social worker that her child is unwanted, but still the social worker stresses her role as a mother and her duty to her child, offering the help of the social agency and threatening court imposed sanctions. He said the mother's message was clear. She did not want the child, but "we" do not listen. I inferred that when Dr. Bates said "we" he meant society in general and those involved in social work, especially child care or welfare, in particular.

Dr. Bates said that there are children who predictably may be abused. An unwanted child is such a child. But a child who is wanted may be such a child. The child may have been wanted for the wrong reason. Perhaps the child is wanted merely to fulfill a parent's need.

He gave various examples of that sort of situation. He spoke of one instance where the mother, even after the deaths of her children at

various times as a result of abuse or neglect, insisted that she would bear another child. Dr. Bates suggested that perhaps that mother was hoping that her next child would be an abnormal child, an exceedingly good baby who would not cry and who would feed well and, in time, would do well at school. Such a child, by such abnormal behaviour, satisfies the mother that she is a fantastic parent. Thus the parent who abused earlier-born children, who, apparently, were normal, might not abuse the abnormal child.

Another wanted child who, predictably, may be beaten is the child who is "difficult." The "difficult" child may be hyperkinetic, may have behavioural problems, may suffer from colic or may be mentally retarded. Dr. Bates said all such children are prone to abuse. Another such child is the child who was premature and therefore required special medical care in the hospital's nursery so that normal bonding between the mother and child did not occur.

Dr. Bates then expanded the list of such children to include children who are "difficult" because of some physical abnormality. He said that the parent of such a child may feel inadequate.

He continued to expand his list. He added a child who may remind the parent of someone or something of whom or of which the parent does not wish to be reminded. The parent then feels that abuse of that child is justified.

He spoke of "other crisis kids." Children with learning disabilities or behavioural problems during school years. He said he felt that in "a fair number" of instances the children's problems stemmed directly from the parents' problems.

Abuse of the child comes when the crisis occurs. Dr. Bates felt that the occurrence of the crisis was inevitable. The crisis can take many forms and have many causes. It may be the child. It may be a marital, financial or health problem in the home. When it occurs it triggers abuse.

In Dr. Bates' opinion too much of the treatment of cases of abuse and neglect is crisis-oriented. He said that the crises is dealt with. A

patch is placed on it, but the basic pathology of the abuse or neglect has not been identified and treated. So abuse is repeated at a later date. That latter seems to be in close agreement with the testimony of others that incidents of abuse often recur, often in a progression of severity.

Dr. Bates testified that it is not too difficult to envisage why a child has been abused. He said that "we," from which I inferred he meant those who work in the field of child care, especially in relation to abuse, know a fair amount about the parents and that there are "certain high risk kids" and that when the crisis comes the parents, because they are "isolated," are unable to see the resources which may be available in the community. He said it was "frequently very frightening" for such parents to ask for help.

Dr. Bates testified that in many instances parents have presented children at hospitals when the children are suffering from various illnesses or injuries. In such instances, he feels that they often, perhaps in a majority of cases, are mutely seeking help. He said that in such instances the parents are not prepared to acknowledge that they have abused the children; nor do they want to be told that. They do need to be "built up." The medical personnel must become involved in the process. That may be accomplished by stressing any indication that the children have received some good care, as in nutrition, acknowledging that there are problems to be encountered in raising children and offering the hospital's support and help in meeting those problems.

With direct reference to Kim's case, Dr. Bates suggested that perhaps she had been brought to the hospital so that the parents might obtain help. The help was not given.

In my understanding of Dr. Bates' testimony that was conjecture and he did not advance the suggestion as being a representation of his considered opinion. I am not satisfied that the evidence upon the Inquiry would support such a conjecture. In my view Jennifer Popen's conduct upon presenting Kim at the hospital on two occasions and her maze of lies and deceit throughout Kim's life and even after her



death negative that conjecture. I am aware that Jennifer Popen in her testimony said she was really asking for help, but her testimony was given about two years after Kim's death and after Jennifer Popen had been interviewed by members of various professions in a number of different settings, including psychiatric and custodial institutions. In my view Jennifer Popen's testimony in that area was merely a further demonstration of her deviousness.

Dr. Bates queried whether or not Jennifer Popen had suffered from post-partum depression after the birth of her son, Karie in July, 1976. He had seen some of the written reports about her. Dr. Bates did not identify the reports which he had read, but I have noted particularly that of Dr. Selwyn M. Smith, Director of the Department of Forensic Psychiatry, Associate Professor of Psychiatry, University of Ottawa. Dr. Smith's report is dated December 12, 1977 and was attached to and formed part of the pre-sentence report upon Jennifer Popen following her having been found guilty of manslaughter.

Dr. Smith in his report wrote of the marriage of Annals Popen and Jennifer Popen as having been "stormy and fraught with difficulties." He wrote that relationships between the couple deteriorated after Kim's birth and were exacerbated by Annals Popen's lack of interest in Kim.

Dr. Smith's reference to Kim's having been abused by Annals Popen when he was under the influence of alcohol was apparently based on statements by Jennifer Popen.

Dr. Bates' query would appear to have arisen at least in part from the following paragraphs in Dr. Smith's report.

"Approximately five weeks before the death of Kim, another child, Kerry (sic), was born on July 6, 1976. Kerry (sic) was a breech birth and Mrs. Popen left the hospital earlier than advised because she had been told that Kim had been crying for her and was not eating properly. Shortly after her return home, a number of problems ensued. Kerry (sic) developed a fever, had

diarrhea, and was a very fractious and and difficult baby. Mrs. Popen was up most of the night for several nights and described how the child would only sleep when it was held or rocked. In addition, Mrs. Popen was experiencing considerable pain associated with her breech delivery. She did have a 15 year old baby sitter to help her and Kim was spending some time with a neighbour. Nevertheless, Mrs. Popen did not feel well and was taking a number of sleeping tablets and analgesics."

and

"The birth of Kerry (sic), combined with his need for special care, the demands of housekeeping, and Kim's disturbance while Mrs. Popen was in hospital and her clinging to her mother upon returning home, constituted a fatigue stress which could have thrown this young mother into a frenzied state in which any further demand would trigger off a complex breakdown with loss of control or reason.

It is my view that these above factors are extremely important in going some way towards understanding the very bizarre conduct of this case."

In discussing his own query, Dr. Bates stated that childbirth is a difficult time and that depression may follow delivery. He said that may then be a crisis period requiring delivery of extra resources into a home which even earlier had given cause for concern. That could apply to a home where a child had been battered and then was returned to the home shortly before or after the birth of the younger child. He said:

"...It is a critical period and when we know that this family is isolated, don't use community resources, and really don't have the wherewithal to know how to parent, it is a bit of a bombshell."

It would seem to me that when Dr. Bates used the word "bombshell" he really was speaking of

an unexploded landmine just awaiting detonation triggered by something.

There was no testimony to establish whether or not Jennifer Popen did suffer from post-partum depression following the birth of either or both of Kim and Karie. In my view, it would seem that it would have been incumbent upon the Society, particularly after Karie's birth, to try to determine that question. I infer from Dr. Bates' testimony that Kim's return to her home, whether shortly before or after Karie's birth, was a factor to be considered in that connection. None of the staff of the Society who testified as to the discussions which culminated in Kim's return to her home on May 27, 1976 indicated that the possibility of post-partum depression was considered.

Dr. Bates referred to differences between the West Indian and Canadian societies. He said that some means of discipline which might be acceptable in the West Indies would be regarded as being too harsh and, thus, abuse of the children, if applied in Canada.

Dr. Bates then moved to a discussion of some of what he understood had occurred in Jennifer Popen's childhood in Jamaica. He spoke of her parents having left her as a young child. He queried the degree of feeling of rejection that that leaving might have caused her to have and whether or not the effects of that feeling of rejection could be overcome. He went on to say that in addition there was the element of later abuse to her. Dr. Bates' words were descriptive when he said she was

"being prepared for a future of a certain degree of chaos."

While those words were spoken by Dr. Bates long after the facts of Kim's case had ended with her death, I infer that Dr. Bates was of the opinion that reasonably qualified and competent persons working in the field of child care or welfare, particularly in relation to protection of children, would have delved deeply into the earlier lives and experiences of Jennifer Popen and Annals Popen. It is the same sort of investigation that Dr. Singh requested in March, 1975 and which was not adequately conducted.



Dr. Bates moved on to discuss Kim's injuries and the explanations for them. He said the practitioner has to look at the injury and the explanation to determine whether or not they fit together. With specific reference to Kim's case he said it must have been known that the injuries and the explanations did not fit together.

Dr. Bates said that practitioners in the field of protection of children from abuse have learned that "the best defence that a person has is a good offence." The practitioner must be able to withstand that offence. That comment begs the question "Did anyone involved in Kim's case withstand Jennifer Popen's defence by a strong offence?" The answer would seem to be "No."

Dr. Bates said that with Kim having suffered multiple fractures:

"...we know what happened. When we see that type of injury we have to have the situation investigated par excellence. We need to have a psychiatrist see the parents to determine if they have the ability to parent in the future after a treatment program is set up."

and later

"We have to have specialists looking at these situations."

Any comparison of that statement with what occurred in Kim's case shows how woefully weak was the performance by those responsible for Kim's care, particularly the Society.

Dr. Bates then spoke of the effects of abuse or neglect, in many forms, upon children. Any child who is abused will be affected by the abuse. The effects of emotional abuse may be "more devastating" than a broken bone or a bruise. He said that the protection of abused children requires that they be examined and observed by psychologists, psychiatrists and child care workers

"because these children may become our criminals. I am sure a lot of these

children end up in Pentang. They have been rejected, they have been neglected, they have been put down and they learn to fight, and if you have been taught as a child that harsh discipline is the right way you will grow up using the same modes of discipline and you will learn that power is right and that you will strive for power and use it."

It would seem that much of that is directly applicable to Kim's case. Jennifer Popen, Kim's mother, appears to have undergone abuse as a child and she, in her turn as it were, imposed on Kim treatment which, in Canada at least, is regarded as abuse of children.

I do not say, nor do I understand Dr. Bates to say, that all or any of what happened to Kim would have been acceptable elsewhere. I understood him to say simply that elsewhere in the world children may, without disapproval of the community, be treated more harshly than children are expected to be treated in Canada. Persons who come to Canada from such localities where they were so harshly treated as children sometimes feel that in Canada they may treat their children in the same way. It is the Canadian community's responsibility to educate those persons that such treatment of children is not acceptable and does constitute abuse of children. That may require social workers to have or acquire special knowledge and skills to understand and deal with the particular problem in Canada raised by the difference between the two communities, one in the land of the parent's childhood outside of Canada and the other in Canada.

Dr. Bates spoke of the unreliability of statistics as to the number of deaths of children caused by abuse. He was "sure" that in 1977 there had been more than the thirteen deaths of children in Ontario attributed to abuse. He acknowledged an absence of data to support his belief. He based his belief on his knowledge of how records are kept and that some injuries really caused by abuse, perhaps a head injury, may be viewed by a coroner or physician as having been caused accidentally, as by a fall.

He referred to Dr. Greenland's 1973 study of child abuse deaths and said that the majority of

deaths of children as a result of abuse occur before the children are three years of age. I have read Dr. Greenland's report. Dr. Bates is most conservative when he says merely "a majority." My calculation, based on Dr. Greenland's statistics for the years 1966 to 1970 in Ontario, is that 37 or approximately 92.5% of the forty such deaths of children reported to the Chief Coroner occurred before the children reached the age of three years.

In another paper written by Dr. Greenland for presentation in August, 1978 he expressed concerns not unlike those of Dr. Bates as to the reliability of statistics in the United Kingdom, the United States of America, and Canada. He cautioned against seeking to compare the statistics of any one of the jurisdictions with those of either of the others.

Dr. Bates testified that from 1971 to 1973 he had conducted a study in Australia with reference to deaths of children from abuse. In that study he found that the time period following the arrival of the child in the home from hospital or from foster care was critical. That time period was from one to three months in duration. He believed that the majority of these deaths from child abuse could be prevented.

Kim's case is not an exception to the pattern of the statistics cited by Dr. Bates. She was about ten weeks old when she suffered the first known fracture. She was seven months old when she suffered the second known fracture. In the interim she suffered fractured ribs and bruises in addition to infections and rash. She was nineteen months old when she died as a result of abuse. Kim's death occurred about eleven weeks after her return home and about one month after the birth of her sibling, Karie.

It would seem that Kim's case is a classic example to illustrate Dr. Bates' testimony.

How unfortunate that it was not recognized as such or, if it was recognized, that steps were not taken to protect Kim.



In his practice Dr. Bates has seen a lot of deaths from abuse. He said that

"...there has always been a tell-tale sign earlier...that should have twigged people off that they had to investigate."

Dr. Bates continued his testimony to speak about decision making. The thrust of that area of his testimony was directed to the role of physicians in cases where children may have been abused or neglected.

In his opinion, a physician in such a case has a multiple responsibility. The physician has a responsibility to the child, a responsibility to the parent or parents of the child and a responsibility to the community, including especially fellow members of the medical professions. That responsibility is to provide the best care possible.

Dr. Bates said that any case of abuse of a child must be recognized as being an emergency situation and must be dealt with adequately.

He suggested that admitting the child to hospital provides immediate protection for the child. It also provides time for investigation of the matter, as by a children's aid society.

Dr. Bates said that members of the medical professions are aware of the provisions of The Child Welfare Act requiring reports to be made to a children's aid society or Crown attorney and protecting anyone who may make any such report in error. In his opinion there is no reason for a physician to fail to comply with the statute by reporting any instance.

He went on to say that a physician may very easily send such a child home from hospital without making any report to a children's aid society or Crown attorney. That would involve risking the child

"...because we never know what's going on in these homes through an investigation by interview in the emerge [emergency department of a hospital] or in a physician's office or in the children's aid society

office. We've got to go into the home and see really what's going on and we have to interview neighbours to find out what is happening."

As I reflect upon that last segment of Dr. Bates' testimony I am struck by the utter failure of the Society to meet what seems to be a reasonable standard of this part of case management suggested by Dr. Bates. Sufficient investigation was not conducted. Until the time in February, 1976 when Mrs. Harvey made the basic decision that Kim would be returned home, Mr. Carter had been severely restricted in the performance of what he felt should have been done, especially in relation to investigation of Kim's home, parents and family. There was no testimony to indicate that any real effort was made to obtain information of the sort which became so available after Kim's death, some of which is mentioned in the pre-sentence report with reference to Jennifer Popen prepared in December, 1977. There was no testimony to indicate that any real effort was made to obtain information from relatives and neighbours of Kim's family.

Dr. Bates testified that any such investigation should be conducted by

"a social worker who has expertise, a social worker who has extra training, a social worker who is respected for her knowledge."

In the same connection he spoke of

"this terribly demanding role of being a child abuse specialist."

That testimony as to the qualifications which Dr. Bates would require of a social worker responsible for the investigation in a case such as Kim's is another illustration of the inadequacy of the Society in its management of Kim's case. No matter how one may feel towards Mrs. Lo and the position in which she found herself, it remains that she did not approach, let alone meet, Dr. Bates' expectations as to qualifications.

Dr. Bates said the social worker should have expertise; Mrs. Lo had none. He said the social worker should have extra training; Mrs. Lo had virtually no training in child welfare and none in child abuse and certainly she had no extra training. He said the social worker should be respected for her knowledge; Mrs. Lo may have been respected, but no one mentioned that respect was for her knowledge in the area of child abuse and indeed she had no such knowledge and was not a child abuse specialist.

Dr. Bates spoke of the need for development of interdisciplinary teams of workers to manage cases of child abuse. The members of such teams should be recognized as specialists.

He said that there have been difficulties because the various persons who may be involved in a case have somewhat different roles. He mentioned the roles of social workers, police officers and doctors as examples. He said each might not understand the roles of the others. Communication and co-operation may lead to understanding.

He cited the co-operation existing between himself and those working with him at the hospital in Toronto with the Metropolitan Toronto Police Force. He said police officers often know more than some social workers do about some families. He said that by a sharing of information each can better prepare whether for court or for management of the case.

He spoke of the need for a conference of all concerned in a case to be held prior to any hearing in court. He said that is one way of ensuring that all of the evidence will be available for the hearing. In that way adjournments will not be required and time will not be wasted.

I compare that with what happened in Kim's case. There was no testimony of any such conference prior to the various court proceedings. Adjournments were granted because of the absence of a witness. While the proceedings were successful in the sense that Annals Popen entered a plea of guilty and Kim was placed in the care of the Society, they were not successful in any other sense. All of the evidence that was available if a thorough investigation had been conducted was not presented and indeed was not



available to be presented. Of course it is fruitless and speculative to wander into the unknown, but I do permit myself to wonder somewhat as to what might have been the results of the court proceedings had Annals Popen pleaded not guilty and had Annals Popen and Jennifer Popen opposed the Society's application.

Dr. Bates testified that while the court may make the ultimate decision the nature of that decision depends upon the preparation of the case and its presentation to the court. If the investigation is inadequate, the court does not receive sufficient information.

He spoke of a judge in the United States of America who told him that the majority of cases lost by the American equivalent of the children's aid society are lost because of inadequate preparation, perhaps inadequate investigation by a social worker or perhaps failure of various people to share knowledge.

Dr. Bates said it is incumbent upon those involved in any case of alleged child abuse to prepare well so as to enable the court to make the best decision. He said:

"...if we don't do that, we are negligent and the whole chain of dealing with child abuse is only as strong as really our deficiencies."

Dr. Bates was asked as to the availability in 1973 of information or knowledge with reference to child abuse. The question related to the availability of such information to a social worker employed by a children's aid society.

He replied that such information and statistical data has been available for years in both medical and social work literature. Some effort might be involved. The social worker would have to know where to look.

In my view it would not be too much to expect that a social worker by training or experience would learn how and where to look for such information or whom to ask for guidance. Surely that would be expected of any professional person. Similarly in

my view a social worker would be expected to assert some effort to acquire necessary or useful information.

Dr. Bates said that considerable literature had been published and distributed in the United States of America. He mentioned various publications by name including one in which he said the problem was described as "the battered child syndrome."

I have looked at Dr. Greenland's report of 1973 and it does contain specific references to a number of books and learned articles published in Canada or in the United States. The earliest so mentioned was an article in Journal of the American Medical Association in 1962. There were two publications in Canada, one entitled "The Battered Child in Canada" and the other, apparently a collection of materials, entitled "Helping the Battered Child and His Family."

Dr. Bates spoke of information being available from parts of the world other than Canada and the United States of America. He mentioned England. Dr. Turner in his testimony had mentioned the case of Maria Colwell in England. The report upon that case was published early in 1974 and reprinted in 1975.

I am satisfied that any social worker or health professional who wished to obtain information upon child abuse could have done so quite easily at any time relevant to the Inquiry and for several years earlier.

Dr. Bates expressed some disappointment flowing from his relationships with the Ministry of Community and Social Services with reference to child abuse. He said that that Ministry showed

"very little drive...in looking at child abuse as a problem."

Dr. Bates felt that in 1973 and 1974 something should have been done, as a start, to provide some information and education about child abuse on a general basis. He sought financial support to enable a brochure on child abuse to be distributed generally to children's aid societies, social workers and

health professionals. He was distressed when that financial support was refused by that Ministry.

Dr. Bates said his request went beyond what Dr. Greenland had done in his report in 1973. Dr. Bates' contact with children's aid societies had demonstrated to him the great need for such a publication. He limited his comments to the children's aid societies in Toronto, but said they wanted something and realized their need for more education upon the subject of child abuse. He said that "we," by which I presume he meant he and at least others at the hospital or hospitals with which he was associated, sought to establish joint programmes with the children's aid societies. He said:

"...at that point the Ministry was really doing very little that I was aware of in the field of child abuse and it was subsequently the late, late 1976 and 1977 when the Ministry started to have some visibility in the area of child abuse educational programmes."

It may be significant that the Ministry "started to have some visibility" after Kim's death.

Dr. Bates' remarks are a valid and strong criticism, perhaps condemnation might not be too strong a word, of The Ministry of Community and Social Services as it was during Kim's lifetime. There was very little drive from the Ministry in the area of child abuse. The Ministry declined support for an effort in that area by one person of eminence in the field expressing the needs felt by others.

Dr. Bates testified that a number of professional persons working in the field of child abuse were "agitating" for a general meeting of workers in the field to share ideas and to meet the generally felt need for a seminar. The Ministry did convene a meeting of some seven or eight persons from Ontario possessing various levels of expertise in different professions. Those persons did meet and assisted the Ministry in organizing such a conference which was held in February, 1976.

The next portion of Dr. Bates testimony expressed disappointment with and inability to



understand the Ministry's attitude and actions after that conference was concluded. On the testimony of Dr. Bates, unchallenged by anyone, I share his disappointment and inability. No explanation of the Ministry's position was given by anyone testifying upon the Inquiry.

Dr. Bates testified that following that conference the group of professionals which had been convened to assist the Ministry in planning the conference wished to remain as a consultative group ready to assist the Ministry in further planning. The group did not ask for any fees, but, I presume, expected to be reimbursed for reasonable out-of-pocket expenses. The Ministry rejected their offer. The Ministry did not want any such arrangement.

The group of professionals represented a considerable body of experience across Ontario. They wanted to assist the Ministry because they realized the importance of the role which the Ministry could fulfill in such an endeavour to provide information to those working in the field. Dr. Bates' approach to the Ministry was that this would be an educational endeavour, but the Ministry did not appear to treat it as a priority. He was confident that others in the health professions and in social work were as distressed as he by the position taken by the Ministry and by its lack of direction.

From Dr. Bates' testimony, which was not challenged upon the Inquiry, I conclude that the impetus for the 1976 seminar came from professional persons outside of the Ministry. They agitated for it. They were called upon by the Ministry to organize it. They did organize it.

There the matter stood. The same professionals made their expertise available to the Ministry without charge. The Ministry did not accept the offer. Dr. Bates sought funding by the Ministry for a brochure on child abuse for general distribution to people responsible for dealing with the problems of child abuse. His request was denied.

Either the Ministry did not realize what was happening by way of abuse of children or it was not sufficiently concerned about it. In either case children in Ontario were the losers. Kim was one of

the most tragic of them. The Ministry must bear some responsibility.

In Dr. Bates' opinion, the Ministry was the logical body to assume responsibility for co-ordination of distribution of such material to children's aid societies and other groups. Such distribution is a massive task. The Ministry has a very close relationship with the children's aid societies. The children's aid societies are primarily responsible for the protection of children from abuse.

It would seem to me that The Child Welfare Act imposes upon The Ministry of Community and Social Services, as represented by the Director appointed for the purposes of that statute, a duty to ensure that children's aid societies receive appropriate, helpful material needed by them for the proper performance of their duties under the statute.

I share Dr. Bates' view as to the logic of his request to the Ministry.

From Dr. Bates' testimony I gather that governments in other jurisdictions have required considerable pressure before they have made adequate funds available for educational programmes upon child abuse. Ontario would seem to conform to that mould.

Dr. Bates testified that, in 1978, there was

"a phenomanal amount of information right now in research into who is a battering parent, the high risk child, why it occurs, and how to treat it."

He acknowledged that some others did not share his view. His view was that, while problems remained and further research would be required, research should be given a lower priority than is given to programmes to prevent abuse of children and programmes to treat families in which abuse of children has occurred.

His view was that, drawing upon the results of research in Canada, the United States of America, England and elsewhere, those responsible for dealing with the problem of child abuse must establish better

programmes for the treatment of abusive situations. That should not be solely the responsibility of local communities and their people and resources. The Ministry should support the local community efforts and should provide direction as to what is needed. The Ministry should not request the local communities to establish demonstration proposals to prove something.

In his view better treatment programmes will entail the formation of teams of workers from various professions to work together co-operatively.

He felt that in addition to better treatment programmes, the same co-operative approach could be taken to seek to prevent abuse of children. In his opinion adequate knowledge was available to enable the establishment of such preventive programmes.

Dr. Bates was asked his opinion of Parents Anonymous. He replied that it is another resource to be developed and made available to abusive parents. While he himself was associated with Parents Anonymous he recognized that it might be appropriate for only a small percentage of abusive parents. By reason of its methods, it appeals more to the motivated person who seeks help. He did not feel that Parents Anonymous was the answer.

In Dr. Bates' opinion children's aid societies are the primary resource to deal with child abuse. They should be better developed.

I would comment that it is necessary to recognize the relationship between children's aid societies and The Ministry of Community and Social Services. The societies are dependent upon that Ministry for about eighty percent of their funding. The societies are required by The Child Welfare Act to fulfill certain duties and obligations, including reports to that Ministry. The Ministry is required to provide supervision and advice to the societies. The societies have a degree or an appearance of local autonomy, but one must wonder as to how autonomous they in fact are. In many ways they are an extension of the Ministry.



























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